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7

8 **SUPERIOR COURT OF CALIFORNIA**
9 **FOR THE COUNTY OF SACRAMENTO**
10

11 KHALIL MCGHEE, individually and on
behalf of all other similarly situated
12 employees,

13 Plaintiff,

14 vs.

15 SALUTE INCORPORATED, a Michigan
16 Corporation; and DOES 1 to 100, inclusive,

17 Defendants.
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19
20
21
22

Case No. 34-2022-00315317

CLASS ACTION

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION AND PAGA
SETTLEMENT**

Reservation No.: 2721356

Date: July 21, 2023

Time: 9:00 a.m.

Dept.: 28

Judge: Hon. Lauri A. Damrell

Filed: February 10, 2022

FAC Filed: April 25, 2022

Trial Date: None Set

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on July 21, 2023, at 9:00 a.m., or as soon thereafter as the matter
3 may be heard in Department 28 of the above-entitled Court, Plaintiff Khalil McGhee, individually and
4 on behalf of all other similarly situated individuals, hereby moves for entry of an Order for the
5 following:

- 6 1. Preliminarily certifying the proposed class herein for purposes of settlement;
- 7 2. Preliminarily appointing Plaintiff Khalil McGhee as Class Representative for purposes of
8 settlement;
- 9 3. Preliminarily appointing Shimoda & Rodriguez Law, PC, as Class Counsel for purposes of
10 settlement;
- 11 4. Preliminarily approving the proposed class action and Private Attorneys General Act
12 settlement, in the amount of \$125,000, which is incorporated herein by reference;
- 13 5. Preliminarily approving the appointment of ILYM Group, Inc. as the Settlement
14 Administrator and for payment to ILYM Group, Inc. for administering said class action
15 settlement in an amount not to exceed \$10,000;
- 16 6. Preliminarily approving the settlement of claims under the Private Attorneys General Act for
17 the total amount of \$10,000, 75% of which will be paid to the Labor and Workforce
18 Development Agency and 25% of which will be paid to Aggrieved Employees;
- 19 7. Approving as to form and content the Notice of Settlement, which provides Class Members
20 information regarding the settlement, their ability to opt out of, or object to, the class action
21 settlement and which provides instruction on how to dispute an individual's settlement
22 allocation under the proposed settlement agreement;
- 23 8. Approving the proposed procedures to notify the class and determining that the proposed
24 notification procedures and process complies with Class Members' due process rights and
25 directing the Notice of Settlement to be sent by first class mail to Class Members;
- 26 9. Directing Defendant to provide a list of all Class Members that includes name, social security
27 number, last known address, last known telephone number and dates of employment worked
28 in the Class Period to the Settlement Administrator to administer the settlement proceeds;

1 10. Scheduling a fairness hearing on the question of whether the proposed settlement should be
2 finally approved as fair, reasonable, and adequate;

3 11. Directing that any amount from settlement checks that were not cashed by the check cashing
4 deadline be donated equally, *i.e.* 50/50, to Capital Pro Bono, Inc., and the Center for
5 Workers' Rights under the doctrine of *cy pres*;

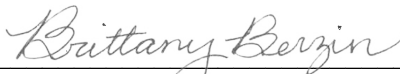
6 12. Preliminarily and conditionally approving and adopting the Proposed Order and its
7 implementation schedule, which is filed herewith and incorporated by reference.

8 This motion is being made pursuant to Code of Civil Procedure section 382, Labor Code section
9 2699(l), and California Rules of Court 3.769 and 3.764, on the grounds that the proposed class action
10 and Private Attorneys General Act settlement is fair, reasonable, and adequate as to all Class Members
11 and should be approved by the Court. This motion will be based on the notice of motion, memorandum
12 of points and authorities, the Declaration of Brittany V. Berzin, the Declaration of Khalil McGhee,
13 exhibits, the record and files of this case, and any further oral or documentary evidence introduced at the
14 hearing of this motion.

15
16 **Pursuant to Local Rule 1.06 (A), the court will make a tentative ruling on the merits of this matter**
17 **by 2:00 p.m., the court day before the hearing. The complete text of the tentative rulings for the**
18 **department may be downloaded off the court's website. If the party does not have online access,**
19 **they may call the dedicated phone number for the department as referenced in the local telephone**
20 **directory between the hours of 2:00 p.m. and 4:00 p.m. on the court day before the hearing and**
21 **receive the tentative ruling. If you do not call the court and the opposing party by 4:00 p.m. the**
22 **court day before the hearing, no hearing will be held.**

23 Dated: June 26, 2023

24 **Shimoda & Rodriguez Law, PC**

25 By: 
26 Galen T. Shimoda
27 Justin P. Rodriguez
28 Brittany V. Berzin
Attorneys for Plaintiff

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Attorneys for Plaintiff KHALIL MCGHEE

SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

KHALIL MCGHEE, individually and on
behalf of all other similarly situated
employees,

Plaintiff,

vs.

SALUTE INCORPORATED, a Michigan
Corporation; and DOES 1 to 100, inclusive,

Defendants.

Case No. 34-2022-00315317

CLASS ACTION

**DECLARATION OF BRITTANY V. BERZIN
IN SUPPORT OF PLAINTIFF'S MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION AND PAGA SETTLEMENT**

Reservation No.: 2721356

Date: July 21, 2023

Time: 9:00 a.m.

Dept.: 28

Judge: Hon. Lauri A. Damrell

Filed: February 10, 2022

FAC Filed: April 25, 2022

Trial Date: None Set

1 I, Brittany V. Berzin, declare:

2 1. I am an attorney at law duly admitted to practice before all the courts of the State of
3 California and an attorney of record for Plaintiff Khalil McGhee (“Plaintiff”) herein. I am making this
4 declaration on behalf of the named Plaintiff, the putative class members, and in support of Plaintiff’s
5 Motion for Preliminary Approval of Class Action and PAGA Settlement (“Motion”). A true and
6 correct copy of the Class Action and PAGA Settlement Agreement and Release (“Agreement”) in this
7 matter is filed with this Motion as Exhibit A.

8 2. This case was brought as a wage and hour class action based on Plaintiff’s contention
9 that Salute Mission Critical LLC (formerly known as Salute Incorporated and hereinafter referred to as
10 “Defendant”) failed to pay overtime wages, failed to pay minimum wages, failed to provide all legally
11 compliant meal periods, failed to provide all legally compliant rest periods, failed to provide accurate
12 wage statements, failed to timely pay final wages, failed to reimburse expenses, and engaged in unfair
13 competition. Plaintiff also alleged liability for civil penalties under the Private Attorneys General Act
14 (“PAGA”). These claims were based on allegations that Defendant violated California law by 1)
15 failing to compensate Class Members for time spent during required weekly meetings and time spent
16 outside of their scheduled shifts waiting for relief (*i.e.*, the next employee to arrive at the work
17 location); 2) failing to provide Class Members with duty-free meal and rest periods; and 3) failing to
18 reimburse Class Members for the use of their personal cellphones for work. The wage statement,
19 waiting time, unfair competition, and PAGA claims are derivative.

20 3. Plaintiff is the only named representative in this matter. We filed the action on or about
21 February 10, 2022. Plaintiff exhausted administrative remedies through the Labor and Workforce
22 Development Agency (“LWDA”) prior to amending the Complaint to add a PAGA claim. Plaintiff
23 filed a notice with the LWDA on December 17, 2021 and February 9, 2022, setting forth the facts and
24 theories of liability. True and correct copies of the notices filed with the LWDA are being filed with
25 this Motion as Exhibit C. Copies of the notice were also sent to Defendant via certified mail and the
26 \$75.00 filing fee was remitted to the LWDA. There was no response by the LWDA regarding its intent
27 to investigate the claims alleged in Plaintiff’s notices for more than 65 days. As such, Plaintiff became
28 authorized to commence a civil action under the PAGA and filed a First Amended Complaint to include

1 the PAGA claims. A true and correct copy of Plaintiff's operative First Amended Complaint is filed
2 with this Motion as Exhibit B. A copy of the First Amended Complaint was uploaded to the LWDA on
3 August 29, 2022, after we received an endorsed copy back from Court.

4 4. Currently, there is no date set for a motion to certify the class and there is no trial date.

5 5. Defendant is represented in this matter by Britney N. Torres, Esq. and Douglas L. Ropel,
6 Esq. of Littler Mendelson P.C. Defendant has contested the merits of the claims arguing that it
7 maintained legally compliant policies. Defendant has also contested the suitability of the case for class
8 action treatment arguing that its operations vary at each of its 13 California locations. Defendant
9 further contended, even assuming there was a finding supporting the imposition of PAGA penalties,
10 that the Court would likely exercise its discretion to substantially reduce any such penalties owed based
11 on evidence of good faith attempts to comply with California Labor Code obligations by Defendant,
12 such as maintaining lawful policies. Notwithstanding its agreement to settle this matter, Defendant
13 maintains that it met its obligations under the law with respect to its employees.

14 6. Through our investigations of Plaintiff's claims and documents at the outset of the case,
15 we believed these claims had merit and could be maintained as a class action. Based on the expected
16 testimony from Plaintiff and Class Members, a review of Defendant's policies and procedures,
17 information on Class Members, including, but not limited to, Class Members' pay periods, dates of
18 employment, total number of Class Members, their rates of pay, as well as timecard data and payroll
19 reports for a randomly selected sample of Class Members, the scope of the potential damages to Plaintiff
20 and Class Members in light of the claims alleged, the uncertainty in the law with regard to certification,
21 and the negotiations that have taken place, I believe the proposed settlement is in the best interest of the
22 class. The length and risks of trial and other normal perils of litigation that impact the value of the
23 claims were also considered and weighed in reaching the Agreement. In addition, I carefully considered
24 the difficulties of complex litigation, and the lengthy process of establishing specific damages and
25 various possible delays and appeals in agreeing to the proposed settlement. I further considered the fact
26 that penalties under the PAGA could be substantially cut at the discretion of the Court even if Plaintiff
27 was successful on proving those claims and there was risk that a Court could find no willfulness in the
28 failure to pay wages at separation, which would eliminate the value of the waiting time penalty claim

1 entirely. Overall, I believe it is more beneficial to secure a guaranteed benefit to the class now rather
2 than to proceed with litigation and potentially obtain zero funds to the class due to legal or factual issues
3 in the case.

4 7. My office, including the partners Galen T. Shimoda and Justin P. Rodriguez, our
5 paralegal, and myself, along with Plaintiff's assistance, thoroughly investigated the merits of the claims
6 and potential damages for such claims. The parties engaged in informal discovery and exchange of
7 documents, including a representative sampling of employee data, such as timecard data and payroll
8 reports, employee handbooks that included relevant policies for the entirety of the statute of limitations
9 applicable to the alleged claims. The discovery covered all aspects of the asserted claims, including
10 certification issues, merits issues, damages, the scope and configuration of Class Members, and the
11 content and implementation of the wage and hour policies at issue. From this production we were able
12 to determine information critical to a reliable damages analysis such as the average hourly rate, average
13 daily hours worked, average number of workweeks and pay periods that had potential violations based
14 on the asserted claims, the frequency with which violations occurred in a given week and/or pay period,
15 and the number of former employees. This information allowed my office to assess both liability and
16 damages and create an accurate damages model. Plaintiff assisted in all aspects of this litigation
17 including providing factual information relating to Plaintiff's and Class Members' employment
18 conditions, providing contact information for witnesses, providing relevant documents in his possession
19 to support his claims, and answering questions regarding Defendant's factual contentions in this matter.
20 This was important because it directly related to our ability to maintain this case as a class action and
21 our ability to obtain a favorable settlement for the class.

22 8. Throughout this litigation our office had numerous communications with Defendant's
23 Counsel discussing our respective positions. It was only after approximately one year and three months
24 of extensive, arm's length negotiations that the parties were able to reach a settlement. The negotiations
25 were at all times contentious and adversarial, though still professional in nature.

26 9. The following represents the potential maximum recovery for each of Plaintiff's claims
27 based on my office's analysis of Defendant's relevant policies and the data produced by Defendant,
28 including a sample of time and payroll records for Class Members. There were approximately 1,648

1 pay periods in the Class Period. We also interviewed putative class members, covering their work
2 experiences in relation to the asserted claims and Defendant's policies and utilizing that information in
3 conducting a merits and damages analysis:

4 a) Meal Period Claim: This claim is based on allegations that Defendant required Class
5 Members to remain on duty during meal periods. The maximum possible damages for
6 this claim based on Defendant's time and payroll records was \$127,851.84. This
7 amount does not take into account any potential risks with respect to Plaintiff proving
8 the merits or damages. For instance, Defendant produced legally compliant written
9 policies it maintained during the Class Period. Defendant's policy required Class
10 Members to notify Human Resources immediately if they were impeded from taking any
11 break they were entitled to. In addition, Defendant argued that this claim would not be
12 appropriate for class certification due to the variance in its operations at its 13 different
13 locations in California. Taking these factors into account, a more realistic range of
14 recovery for this claim is \$25,570.37 to 63,925.92.

15 b) Rest Period Claim: This claim is based on allegations that Defendant required Class
16 Members to remain on duty during rest periods. Based on testimony from Plaintiff and
17 Class Members, it was estimated the violation rate for this claim was likely the same or
18 very similar to the meal period claim. For example, for any shifts Class Members
19 contend they were required to remain on duty, that requirement would have applied to
20 both their meal and rest periods. The maximum possible damages for this claim based
21 on Defendant's time and payroll records was \$127,851.84. This amount does not take
22 into account any potential risks with respect to Plaintiff proving the merits or damages.
23 For instance, Defendant produced legally compliant written policies it maintained during
24 the Class Period. Defendant's policy required Class Members to notify Human
25 Resources immediately if they were impeded from taking any break they were entitled
26 to. In addition, Defendant argued that this claim would not be appropriate for class
27 certification due to the variance in its operations at its 13 different locations in
28

California. Taking these factors into account, a more realistic range of recovery for this claim is \$25,570.37 to 63,925.92.

c) Overtime Claim: This claim is based on allegations that Defendant required Class Members to attend weekly meetings off-the-clock and that Class Members spent time off-the-clock waiting for relief (*i.e.*, the next employee to arrive at the work location). The maximum possible damages for this claim based on Defendant's time and payroll records was \$255,703.68. This amount does not take into account any potential risks with respect to Plaintiff proving the merits or damages. Defendant produced a written policy instructing Class Members to record their work start and end times. The policy also "strictly prohibits" Class Members from working off the clock for any reason and specifies that all time spent working must be logged and accounted for. Defendant further contends that Class Members, per Defendant's policy, were responsible for submitting and approving their time records each week. In order to be liable for off-the-clock work, an employer must know or have reason to know it was occurring. *Brinker Rest. Corp. v. Superior Ct.*, 53 Cal.4th 1004, 1051 (2012). In addition, Defendant argued that this claim would not be appropriate for class certification due to the variance in its operations at its 13 different locations in California. Taking these factors into account, a more realistic range of recovery for this claim is \$0 to 127,851.84.

d) Minimum Wage Claim: This claim is based on allegations that Defendant required Class Members to attend weekly meetings off-the-clock and that Class Members spent time off-the-clock waiting for relief (*i.e.*, the next employee to arrive at the work location). The maximum possible damages for this claim based on Defendant's time and payroll records was \$85,696.00. This amount does not take into account any potential risks with respect to Plaintiff proving the merits or damages. Defendant produced a written policy instructing Class Members to record their work start and end times. The policy also "strictly prohibits" Class Members from working off the clock for any reason and specifies that all time spent working must be logged and accounted for. Defendant

1 further contends that Class Members, per Defendant's policy, were responsible for
2 submitting and approving their time records each week. In order to be liable for off-the-
3 clock work, an employer must know or have reason to know it was occurring.
4 *Brinker Rest. Corp. v. Superior Ct.*, 53 Cal.4th 1004, 1051 (2012). In addition,
5 Defendant argued that this claim would not be appropriate for class certification due to
6 the variance in its operations at its 13 different locations in California. A good faith
7 dispute would eliminate liability for liquidated damages for unpaid minimum wages.
8 *See* Cal. Lab. Code § 1194.2(b). Taking these factors into account, a more realistic
9 range of recovery for this claim is \$0 to \$42,848.00.

10 e) Wage Statement Violations: This claim is derivative of the above claims. The maximum
11 possible damages for this claim based on Defendant's time and payroll records was
12 \$39,100.00. This amount does not take into account any potential risks with respect to
13 Plaintiff proving the merits or damages. Because this claim is derivative, it carries the
14 same risks. If Plaintiff did not prevail on the claims above, the value of this claim would
15 be eliminated or reduced. Moreover, there was a risk that to the extent wage statements
16 were incorrect, a trier of fact could find it was not a knowing and intentional error by
17 Defendant. Taking these factors into account, a more realistic range of recover for this
18 claim is \$0 to \$19,550.00.

19 f) Waiting Time Claim: This claim is derivative of the above claims. The maximum
20 possible damages for this claim based on Defendant's time and payroll records was
21 \$307,030.61. This amount does not take into account any potential risks with respect to
22 Plaintiff proving the merits or damages. Because this claim is derivative, it carries the
23 same risks. If Plaintiff did not prevail on the claims above, the value of this claim would
24 be eliminated or reduced. Moreover, there is substantial risk that Defendant's policies
25 and records would provide it with a good faith affirmative defense, which would
26 eliminate the value of this claim entirely. *See Diaz v. Grill Concepts Servs., Inc.*, 23
27 Cal.App.5th 859, 868 (2018). Taking these factors into account, a more realistic range
28 of recover for this claim is \$0 to \$153,515.31.

- 1 g) Reimbursement Claim: This claim is based on allegations that Defendant required Class
2 Members to use their personal cellphones for work. The maximum possible damages
3 for this claim based on testimony from Plaintiff and Class Members are estimated to be
4 \$32,960.00. This amount does not take into account any potential risks with respect to
5 Plaintiff proving the merits or damages. Defendant produced a written policies it
6 maintained during the Class Period to reimburse Class Members for any work expenses
7 incurred. The policy required Class Members to turn in expense reports in order to be
8 reimbursed. Defendant contends it paid reimbursements that were submitted pursuant to
9 its policy. Taking these factors into account, a more realistic range of recover for this
10 claim is \$0 to \$16,480.00.
- 11 h) PAGA: This claim is derivative of the Labor Code violations identified above and would
12 be subject to all the same risks as the underlying claims it is based on. Additionally,
13 based on our research, we did not find any prior Labor Commissioner or court decisions
14 that stated Defendant's practices and/or policies were improper. As such, a "subsequent
15 violation" may not be found for penalty calculation purposes, and the exposure analysis
16 here is based on an "initial violation" valuation being adopted by any fact finder if this
17 matter went to trial. *See Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1207-
18 1209 (2008). Based on Class Members' payroll data, the maximum total exposure for
19 this claim is \$640,747.70. This amount does not take into account any of the risks in
20 proving the merits of the underlying claims that the PAGA damages are based on. In
21 addition to the risks on the merits and disputes regarding the proper valuation of the
22 penalty amounts, I believe the Court may exercise its discretion to reduce PAGA
23 penalties in this case in light of Defendant's legally compliant policies that a Court may
24 find demonstrates a good faith attempt at compliance. Courts are statutorily authorized
25 to use discretion to reduce penalties and the range of discretion used varies substantially.
26 *See Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (30%
27 reduction); *Fleming v. Covidien, Inc.*, 2011 U.S. DIST. LEXIS 154590, *9 (C.D. Cal.
28 2011) (82% reduction). The 82% reduction equates to roughly \$9-\$50 worth of civil

1 penalties per pay period per employee depending on the total potential value of the civil
2 penalty (*i.e.*, \$50-\$250), which is more in line with actual awards based on my
3 experience and review of awards in other cases. Thus, even if using the maximum
4 values possible and setting aside risks of proving the claims on the merits, the total
5 exposure may be cut to approximately \$115,334.59 (82% reduction) to \$448,523.39
6 (30%) or lower. It is important to note that this discretionary reduction is completely
7 separate and in addition to any risks on the merits. Given the substantial risks associated
8 with the claims, we believe the amount that might ultimately be awarded under this
9 claim would be significantly lower than our maximum exposure calculation. Allocating
10 \$10,000 to the PAGA claims in this case is appropriate, especially in light of amounts
11 that Courts have approved as reasonable valuations in other cases. *See Nordstrom Com.*
12 *Cases*, 186 Cal.App.4th 576, 589 (2010) (approving \$0 allocation to the resolution of
13 PAGA claims based on their being disputed and being part of a class settlement which
14 was evaluated based on the terms of the agreement overall); *Junkersfeld v. Med. Staffing*
15 *Sols., Inc.*, 2022 WL 2318173, at *8 n.2 (E.D. Cal. 2022) (collecting cases with PAGA
16 settlement values ranging from .037%-1%); *Jennings v. Open Door Marketing, LLC*,
17 2018 WL 4773057, *9 (N.D. Cal. 2018) (approving settlement of PAGA claims at 0.6%
18 of total estimated value due to risk of no recovery); *Ruch v. AM Retail Grp., Inc.*, 2016
19 WL 5462451, *7 (N.D. Cal. 2016) (approving \$10,00 PAGA settlement allocation
20 where total PAGA penalty exposure was approximately \$5.2 million, or 0.2% of total
21 estimated value); *Davis v. Cox Commc'ns California, LLC*, 2017 U.S. Dist. LEXIS
22 63514, *1 (S.D. Cal. 2017) (preliminarily approving \$4,000 PAGA allocation in
23 \$275,000 settlement); *Moore v. Fitness Int'l, LLC*, 2014 U.S. Dist. LEXIS 8358, *5
24 (S.D. Cal. 2014) (approving \$2,500 PAGA allocation when attorneys' fees award alone
25 amounted to \$200,000); *Jack v. Hartford Fire Ins. Co.*, 2011 U.S. Dist. LEXIS 118764,
26 *6 (S.D. Cal. 2011) (approving \$3,000 PAGA allocation in \$1,200,000 settlement);
27 *Singer v. Becton Dickinson & Co.*, 2010 U.S. Dist. LEXIS 53416, *2 (S.D. Cal. 2010)
28 (approving \$3,000 PAGA allocation in \$1,000,000 settlement); *Hopson v. Hanesbrands*

1 *Inc.*, 2009 U.S. Dist. LEXIS 33900, *9 (N.D. Cal. 2009) (approving \$1,500 PAGA
2 allocation in \$1,026,000 settlement); *Syed v. M-I, L.L.C.*, 2017 U.S. Dist. LEXIS 24880,
3 *34-35 (E.D. Cal. 2017) (approving \$100,000 PAGA allocation in a \$3,950,000
4 settlement even though PAGA exposure was calculated at \$53,600,000, or 0.2% of total
5 estimated value); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, at
6 *7 (E.D. Cal. 2012) (approving \$10,000 PAGA allocation in a \$3,700,000 settlement);
7 *Franco v. Ruiz Food Prod., Inc.*, 2012 WL 5941801, at *14 (E.D. Cal. 2012) (\$10,000 in
8 PAGA payment from \$2,500,000 settlement fund); *Chu v. Wells Fargo Investments,*
9 *LLC*, 2011 WL 672645, at *1 (N.D. Cal. 2011) (approving PAGA settlement payment of
10 \$7,500 to the LWDA out of \$6.9 million common-fund settlement).

11 10. In summary, Plaintiff's gross recovery of \$125,000 under the Agreement equals
12 approximately 7.7% of the maximum likely value of the claims in this matter and between 13.3% and
13 75.1% of the more realistic range of recovery. After deducting from the Gross Settlement Amount the
14 proposed allocations for attorneys' fees and costs, any Enhancement Payment to the Class
15 Representative, Settlement Administrator Costs, and the PAGA Payment to the LWDA, the net
16 recovery under the Agreement, \$45,250.00, represents approximately 2.8% of the maximum likely
17 value of the claims in this matter. The net recovery also represents between 4.8% and 27.2% of the
18 more realistic range of recovery. The average net award is approximately \$646.42. I believe the
19 Agreement represents a reasonable compromise of claims based on the legal and factual disputes in this
20 case. The ability to secure a guaranteed settlement now and ensure Class Members receive some
21 compensation, rather than proceed to further litigation and potentially recover nothing, was a
22 motivating factor in reaching this Agreement.

23 11. In agreeing to represent Plaintiff and take on the case for all Class Members, our office
24 agreed to take this case on a contingency basis, meaning that we would take a percentage of any
25 settlement or judgment should we recover a monetary amount. We took a risk that we would not
26 recover any money in this matter if we were unsuccessful at trial. We also took on the risk that the case
27 may be subject to an unfavorable summary judgment ruling. However, we believe it is important to
28 make sure employees are able to find affordable representation in order to ensure that employers are

1 complying with all their legal obligations towards employees and paying employees all their hard-
2 earned wages.

3 12. I am a Senior Associate at Shimoda & Rodriguez Law, PC. Our law firm is a boutique
4 law practice that focuses primarily on employment litigation, emphasizing wage and hour litigation. I
5 attended and graduated college from U.C. Davis, receiving a Bachelor of Arts in Psychology. I
6 received my J.D. from the University of the Pacific McGeorge School of Law. I joined Shimoda &
7 Rodriguez Law, PC as a law clerk in February 2015 where I gained civil litigation experience working
8 on individual, class action and PAGA employment cases throughout law school. I also participated in
9 an employment law clinic in 2015 and 2016 that helps low-income workers by providing free legal
10 consultations, advising employees of their legal remedies on a variety of matters (*e.g.*, wage and hour,
11 discrimination/harassment, California leave laws, unemployment, workers' compensation, retaliation,
12 and wrongful termination, etc.) under the supervision of an attorney, preparing wage claims, and
13 providing representation in wage claims before the California Labor Commissioner. From 2016-2017,
14 I completed an externship at the Federal Public Defenders Office as a Certified Law Student where I
15 obtained discovery, completed legal research, drafted motions, negotiated plea deals, represented
16 clients in a variety of hearings (*e.g.*, arraignments, motion hearings, sentencing hearings, etc.), and
17 defended a client against five misdemeanor charges in a jury trial in the United States District Court for
18 The Eastern District of California. I was also a member of the nationally recognized McGeorge Mock
19 Trial Team and went on to coach a high school Mock Trial team in 2018 after graduating from law
20 school. In May 2017, I graduated from the University of the Pacific, McGeorge School of Law with
21 Great Distinction and was inducted into the Order of the Coif, graduating in the top 10% of my class. I
22 received the Witkin Award for Academic Excellence in Legal Research and Writing, Civil Procedure,
23 Bankruptcy, and Criminal Procedure. From 2020 to present, I have been recognized as a Super
24 Lawyer (Rising Star). I have been a member of the executive committee of the Sacramento County Bar
25 Association Labor & Employment Section since January 2020, serving as Co-Chair of the committee in
26 2021. I have over seven years of experience working on civil litigation and employment law matters.
27 Most of that experience has been specific to analyzing and litigating wage and hour claims. As an
28 associate, I have worked on a variety of individual, class action, and PAGA cases involving wage and

hour claims, such as failure to pay overtime, failure to pay minimum wages, failure to provide meal and rest periods, failure to pay reimbursement expenses, unlawful deductions, failure to keep accurate time records, failure to provide paid sick leave, failure to pay all wages upon separation, unfair competition, breach of contract, independent contractor misclassification, and salaried misclassifications. Some of the class action and/or PAGA cases I am litigating and/or have litigated as lead or co-counsel include the following:

- *Arosemena v. Ranchhodrai, Inc., et al.*, Case No. STK-CV-UOE-2019-15963 (San Joaquin Sup. Ct.);
- *Arroyo v. Epic Home Solar*, Case No. 34-2021-00310634 (Sac. Sup. Ct.);
- *Balli v. Brown Box Investments, Inc., et al.*, Case No. 34-2018-00232656 (Sac. Sup. Ct.);
- *Barkhousen, et al. v. Bank of Stockton*, Case No. STK-CV-UOE-2019-17145 (San Joaquin Sup. Ct.);
- *Barrios v. American Property Management, Inc.*, Case No. 1:18-cv-00352-AWI-SKO (E.D. Cal.);
- *Callahan v. Creative Alternatives, Inc., et al.*, Case No. 2027518 (Stanislaus Sup. Ct.);
- *Collazo v. T.O.P. Marketing Group, Inc.*, Case No. 34-2022-00314092 (Sac. Sup. Ct.);
- *Cristobal v. BAT Residential Services, Inc.*, Case No. FCS056331 (Solano Sup. Ct.);
- *Coronado v. MGD, Inc.*, Case No. STK-CV-UOE-2021-893 (San Joaquin Sup. Ct.);
- *Estrada v. MAD Security Services, Inc.*, Case No. 34-2021-00300627 (Sac. Sup. Ct.);
- *Ferreira v. Point Digital Finance, Inc., et al.*, Case No. 20CV373776 (Santa Clara Sup. Ct.);
- *Finance of America Wage And Hour Cases*, Case No. JCCP 5081 (Orange County Sup. Ct.);
- *Gomez, et al. v. Kleary Masonry, Inc.*, Case No. 34-2020-00278067 (Sac. Sup. Ct.);
- *Gonzalez v. Northcentral Pizza, LLC, et al.*, Case No. 34-2019-00252018 (Sac. Sup. Ct.);
- *Gordon, et al. v. Hospice Source, LLC*, Case No. 34-2019-00250022 (Sac. Sup. Ct.);
- *Green v. Warden Security Associates, Inc.*, Case No. 22CV396140 (Santa Clara Sup. Ct.);
- *Hampton v. Unlimited Security Specialists, Inc.*, Case No. CV2021-2130 (Yolo Sup. Ct.);
- *Hercules, et al. v. Maximus Services, LLC*, Case No. 34-2019-00268385 (Sac. Sup. Ct.);
- *Insixiengmay v. Hyatt Corporation*, Case No. 2:18-cv-02993-TLN-DB (E.D. Cal);

- *Kurtz v. Perimeter Security Group, LLC, et al.*, Case No. CU19-083650 (Nevada Sup. Ct.);
- *Leong-Call v. MRB Foods, Inc.*, Case No. 34-2020-00287486 (Sac. Sup. Ct.);
- *Magat v. Medical Care Professionals, Inc., et. al.*, Case No. SCV0042579 (Placer Sup. Ct.);
- *Mayorga v. Brown Strauss, Inc.*, Case No. STK-CV-UOE-2020-0010906 (San Joaquin Sup. Ct.);
- *McMahon v. Airco Mechanical, Inc.*, Case No. 34-2019-00259269 (Sac. Sup. Ct.);
- *Meals v. Grass Valley Extended Care, Inc., et al.*, Case No. CU19-083606 (Nevada Sup. Ct.);
- *Munoz v. Wilmor And Sons Plumbing And Construction*, Case No. 34-2021-00306609 (Sac. Sup. Ct.);
- *Ruiz v. CTE Cal, Inc.*, Case No. 34-2020-00289168 (Sac. Sup. Ct.);
- *Saavedra, et al. v. SMF Global, Inc.*, Case No. 34-2018-00243363 (Sac. Sup. Ct.);
- *Scarano v. J.R. Putman, Inc., et al.*, Case No. 34-2018-00244753 (Sac. Sup. Ct.);
- *Scoggins, et al. v. Energy Star Construction, Inc.*, Case No. 34-2018-00243048 (Sac. Sup. Ct.);
- *Strawn v. Bridgestone Retail Operations, LLC*, Case No. 34-2018-00242049 (Sac. Sup. Ct.);
- *Sullivan v. National Response Corporation*, Case No. 34-2018-00244757 (Sac. Sup. Ct.);
- *Tracy v. Von Housen's Sacramento, Inc.*, Case No. 34-2020-00282778 (Sac. Sup. Ct.);
- *Uribe v. Ecoguard Pest Management, Inc.*, Case No. 34-2021-00300650 (Sac. Sup. Ct.);
- *Vasquez v. Chriswell Home Improvements, Inc.*, Case No. 34-2021-00305938 (Sac. Sup. Ct.);
- *Villarruel, et al. v. General Produce Company, et al.*, Case No. 34-2021-00311463 (Sac. Sup. Ct.);
- *Walker v. Yan Kalika Dental Corporation*, Case No. 34-2021-00305106 (Sac. Sup. Ct.); and
- *Webb v. Professional Healthcare At Home, LLC*, Case No. FCS055317 (Solano Sup. Ct.).

13. The preceding list of cases does not include those where, for a variety of reasons, the case was initially filed as a class and/or PAGA action, but did not maintain that status through the end of the case.

1 14. The partner, Justin P. Rodriguez, Esq. also worked with me on this matter and was
2 critical in assisting with all aspects of the litigation of this case. Mr. Rodriguez attended and graduated
3 college from U.C. Davis, receiving a Bachelor of Arts in Philosophy and the Departmental Citation for
4 Academic Achievement in the Philosophy program. He was one of only two recipients of this award
5 out of the entire Philosophy Department. After U.C. Davis, Mr. Rodriguez attended the University of
6 the Pacific, McGeorge School of Law, graduating in 2011 and receiving a Juris Doctorate. He
7 graduated in the top 20% of his class and was a member of the Traynor Honor Society at McGeorge.
8 Other academic achievements of his include receiving a Witkin Award (top grade) in his legal research
9 and writing course, a Witkin Award in complex civil litigation, being a member of the Dean's List from
10 2008 to 2011, being a Legislative Staff Writer for the *McGeorge Law Review* from 2009–2010, being
11 an Associate Comment Editor for the *Pacific McGeorge Global Business & Development Law Journal*
12 from 2010–2011, and being selected as a Sacramento County Bar Association Diversity Fellow in
13 2009. Mr. Rodriguez was also a member of the Employment and Labor Law Society and an officer for
14 the Latino Law Students Association from 2009 to 2010.

15 15. Mr. Rodriguez was an associate of the Shimoda Law Corp from 2011 to 2016 and
16 became a partner in 2017. Shimoda Law Corp. became Shimoda & Rodriguez Law, PC, in 2022.
17 Since 2017, he has received an AV Preeminent rating from Martindale-Hubbell for his legal ability and
18 ethical standards. From 2018 to present, he has been recognized as a Super Lawyer (Rising Star). Mr.
19 Rodriguez has been a panel speaker and presented a number of seminars covering issues wage and hour
20 litigation in general and complex class and PAGA litigation in particular. These engagements include
21 the following: (1) *Epic Systems*, PAGA, and the Future of Employment Arbitration in California
22 (Sacramento County Bar Assoc., Sept. 2018); (2) Class Actions and PAGA Claims (Assoc. of Defense
23 Counsel of Northern California & Nevada, Jul. 2020); (3) Mediation: The Experienced Trial Lawyers
24 Perspective (Sacramento County Bar Assoc., Sept. 2020); (4) How to Become a Pivotal Part of Any
25 Wage and Hour Practice Group (Sacramento County Bar Assoc., Mar. 2021); (5) Emerging Trends and
26 Issues Relating to Arbitration and PAGA Claims in a Post-*Viking River Cruises* World (Sacramento
27 County Bar Assoc., Nov. 2022). Mr. Rodriguez was elected to the Sacramento County Bar Association
28 Labor and Employment Law Section's executive committee in 2019 and was the Chair of the executive

committee for 2022. Mr. Rodriguez has also been a member of the Presiding Judge Civil Law Advisory Committee for Sacramento County Superior Court since August 2020. His practice focuses on complex civil litigation, including wage and hour class actions, PAGA claims, and Fair Labor Standards Act (“FLSA”) claims. He is actively involved in most of the complex litigation handled by our firm. Class and/or PAGA actions he has litigated or is currently litigating include, but is not limited to, the following:

- *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- *Adams-Angway v. Placer Title Company, et al.*, Case No. SCV0040845 (Placer Sup. Ct.);
- *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- *Aslam v. American Custom Private Security, Inc.*, Case No. STK-CV-UOE-2018-0012080 (San Joaquin Sup. Ct.);
- *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac. Sup. Ct.);
- *Barkhousen v. Bank of Stockton*, Case No. STK-CV-UOE-2019-17145 (San Joaquin Sup. Ct.);
- *Benak v. MDStat Urgent Care, Inc.*, Case No. 34-2015-00188181 (Sac. Sup. Ct.);
- *Bigornia v. Quest Diagnostics Clinical Laboratories, Inc., et al.*, Case No. 34-2019-00271174 (Sac. Sup. Ct.);
- *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup. Ct.);
- *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac. Sup. Ct.);
- *Castorena v. Flowmaster, Inc.*, Case No. CV18-2191 (Yolo Sup. Ct.);

- 1 • *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup.
2 Ct.);
- 3 • *Carr, et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- 4 • *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-
5 00209613 (Sac. Sup. Ct.);
- 6 • *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- 7 • *Cress, et al. v. Mitsubishi Chemical Carbon Fiber and Composites, Inc.*, Case No. 34-2017-
8 00222101 (Sac. Sup. Ct.);
- 9 • *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.);
- 10 • *Ferreyra v. Point Digital Finance, Inc., et al.*, Case No. 20CV373776 (Santa Clara Sup. Ct.);
- 11 • *Foye v. The Golden 1 Credit Union*, Case No. 34-2018-00235003 (Sac. Sup. Ct.);
- 12 • *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- 13 • *Garcia v. Royal Plywood Company, LLC, et al.*, Case No. 34-2017-00221627 (Sac. Sup. Ct.);
- 14 • *Gomes v. Progressive Casualty Insurance Company*, Case No. 34-2018-00241979 (Sac. Sup.
15 Ct.);
- 16 • *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- 17 • *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
- 18 • *Gonzalez v. Northcentral Pizza, LLC, et al.*, Case No. 34-2019-00252018 (Sac Sup. Ct.);
- 19 • *Gordon, et al. v. Hospice Source, LLC, et al.*, Case No. 34-2019-00250022 (Sac. Sup. Ct.);
- 20 • *Gotts v. John L. Sullivan Chevrolet, Inc.*, Case No. 34-2018-00231576 (Sac Sup. Ct.);
- 21 • *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- 22 • *Hellum v. AI Protective Services, LLC, et al.*, Case No. 34-2018-00234449 (Sac. Sup. Ct.);
- 23 • *Hercules v. Maximus Services, LLC, et al.*, Case No. 34-2019-00268385 (Sac Sup. Ct.);
- 24 • *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac. Sup. Ct.);
- 25 • *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- 26 • *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- 27 • *Insixiengmay v. Hyatt Corporation, et al.*, Case No. 2:18-cv-02993-TLN-DB (E.D. Cal.);
- 28 • *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);

- *McMahon v. Airco Mechanical, Inc.*, Case No. 34-2019-00259269 (Sac. Sup. Ct.);
- *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- *Nguyen v. Cardinal Health Pharmacy Services, LLC, et al.*, Case No. 34-2019-00263185 (Sac. Sup. Ct.);
- *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- *Roberts v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-00082201 (Sac Sup. Ct.);
- *Salas, et al. v. Joint Ventures, LLC, et al.*, Case No. 34-2018-00227493 (Sac. Sup. Ct.);
- *Salmon v. Ovations Fanfare, L.P., et al.*, Case No. 34-2018-00244749 (Sac. Sup. Ct.);
- *Scarano v. J.R. Putman, Inc.*, Case No. 34-2018-00244753 (Sac. Sup. Ct.);
- *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- *Sullivan v. National Response Corporation*, Case No. 34-2018-00244757 (Sac. Sup. Ct.);
- *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. 34-2017-00211553 (Sac. Sup. Ct.);
- *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.); and
- *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

16. The preceding list of cases does not include those where, for a variety of reasons, the case was initially filed as a class and/or PAGA action, but did not maintain that status through the end of the case.

17. The partner, Galen T. Shimoda, Esq. also assisted with this case. Mr. Shimoda graduated from the University of Utah in 2000 with a B.S. in Business Management and a B.A. in Asian Studies, with a minor in Japanese language. He then attended and graduated from the University of the Pacific, McGeorge School of Law and received his J.D. degree in 2003. He graduated from McGeorge in the top 5% of his class and was a member of the Order of the Coif and Traynor Honor

1 Society. Since graduating from McGeorge, he has authored a number of employment law articles for
2 journals and regularly publishes articles on our firm's website.

3 18. He has been a regular panel speaker for the CEB (Continuing Education of the Bar)
4 Employment Review seminars from 2014 to the present. His speaking engagements include the
5 following: 1) Lorman Military Leave Law Speaker; 2) Restaurant Association Speaker at Annual
6 Seminar (Los Angeles); 3) Federal Bar Association, Sacramento Chapter: 2015 Amendments to the
7 Federal Rules of Civil Procedure (Mar. 30, 2016); 4) CEB – Employment Law Practice: 2016 Year in
8 Review (Jan. 20, 2017); 5) CEB – Employment Law Practice: 2015 Year in Review (Jan. 22, 2016); 6)
9 CEB – Employment Law Practice: Year in Review (2014) (Jan. 9, 2015); 7) CEB - Employment Law
10 Practice: Year in Review (2013) (Jan. 10, 2014); 8) Sacramento County Bar Association - Class
11 Actions from the Trenches: Real World Experiences from the Plaintiff and Defense Bar (Feb. 21,
12 2012); 9) Sacramento Employer Advisory Council – Wage and Hour Workshop: Going Beyond the
13 Exemption Discussion (Apr. 7, 2016); 10) Sacramento Employer Advisory Council - Wage & Hour
14 Panel and AB 1825 Training: Updates on California's New Wage Laws and Manager Compliance
15 Training (Apr. 25, 2017); 11) Sacramento County Bar Association, Labor and Employment Section –
16 PAGA Representative Litigation: Emerging Trends and Issues (May 17, 2016); 12) Sacramento
17 Business Journal Panel – Overtime Rules (Jun. 23, 2016); 13) Association of Defense Counsel of
18 Norther California & Nevada - Employment Law Update – Do the Math: Calculation Exposure and
19 Damages in Wage and Hour Cases (Aug. 12, 2016); 14) California Employment Lawyers Association -
20 PAGA Today and PAGA Tomorrow: Moderate-Advanced Issues In PAGA Litigation (Oct. 20, 2017);
21 15) California Employment Lawyers Association Advanced Wage and Hour Seminar – Better Know a
22 Venue Roundup (May 17, 2019). He has been AV rated by Martindale Hubbell since 2013, was
23 recognized as a Super Lawyer (Rising Star) from approximately 2009 to 2013 and was recognized as a
24 Super Lawyer from 2014 to present.

25 19. He has practiced law in California since being admitted to the State Bar in 2003,
26 litigating wage and hour class actions and individual wage and hour litigation among other cases. He
27 began practicing class action law on the defense side at the firm of Orrick, Herrington & Sutcliffe LLP.
28 He then switched to plaintiff class action work in 2005. His class action experience is in wage and hour

1 law. He has litigated several class action cases in California State and Federal Courts, including up to
2 certification, settlement, preliminary and final approval, and disbursement of monies, and has been
3 found to be satisfy the adequacy requirements for class counsel. Some of the class action and/or PAGA
4 cases he is litigating and/or has litigated as lead or co-counsel over the past nineteen (19) years include,
5 but are not limited to, the following:

- 6 • *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- 7 • *Acosta v. Acosta Sales, LLC, et al.*, Case No. 2:11-CV-01796 (C.D. Cal.);
- 8 • *Atchley v. Blaggs Food Service, LLC*, 34-2017-0215930 (Sac. Sup. Ct.);
- 9 • *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- 10 • *Arnall v. North American Merchandising Service Inc.*, Case No. 06AS01439 (Sac. Sup. Ct.);
- 11 • *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- 12 • *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- 13 • *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- 14 • *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac.
15 Sup. Ct.);
- 16 • *Benak v. MDStat Urgent Care, Inc.*, No. 34-2015-00188181 (Sac. Sup. Ct.);
- 17 • *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup.
18 Ct.);
- 19 • *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup.
20 Ct.);
- 21 • *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac.
22 Sup. Ct.);
- 23 • *Carlos v. Abel Mendoza, Inc., et al.*, Case No. 34-2016-00195806 (Sac. Sup. Ct.);
- 24 • *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup.
25 Ct.);
- 26 • *Carr et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- 27 • *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-
28 00209613 (Sac. Sup. Ct.);

- *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- *Colbert v. American Home Craft Inc.*, Case No. 05AS05012 (Sac. Sup. Ct.);
- *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.)
- *Diosdado v. Nor-Cal Venture Group, Inc., et al.*, Case No. STK-CV-UOE-2020-0008242 (San Joaquin Sup. Ct.);
- *Dugue v. Sierra Forever Families, et al.*, Case No. 34-2017-00210770 (Sac. Sup. Ct.);
- *Fadhl v. Siemens Healthcare Diagnostics, Inc., et al.*, Case No. 34-2017-00209518 (Sac. Sup. Ct.);
- *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No. 20CV01255 (Butte Sup. Ct.);
- *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- *Gerard v. Les Schwab Tires Center of California, Inc.*, Case No. 34-2007-30000003 (Sac. Sup. Ct.);
- *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
- *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- *Hernandez et al. v. MP Nexlevel, LLC et al*, Case No. 3 :16-cv-03015-JCS (N.D. Cal.);
- *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac Sup. Ct.);
- *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- *James v. Language World Services, Inc., et al.*, Case No. 34-2020-00279929 (Sac. Sup. Ct.);
- *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- *Koretsky v. Furniture USA, Inc.*, Case No. 34-2014-00172142 (Sac. Sup. Ct.);
- *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- *Massey v. V3 Electric, Inc., et al.*, Case No. 34-2019-00263666 (Sac. Sup. Ct.);
- *Miller v. Caldwell Transportation Company, LLC, et al.*, Case No. 34-2018-00234954 (Sac. Sup. Ct.);
- *Miller v. Leaders in Community Alternatives*, Case No. FCSO47249 (Solano Sup. Ct.);
- *Pickens v. Elica Health Centers*, Case No. 34-2016-00200382 (Sac. Sup. Ct.);

- *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- *Rickwalt v. Direct Reconditioning, LLC, et al.*, Case No. 34-2015-00175642 (Sac. Sup. Ct.);
- *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-00082201 (Sac Sup. Ct.);
- *Rogers v. Les Scwhab Tires Center of California, Inc.*, Case No. 34-2009-00066320 (Sac. Sup. Ct.);
- *Schechter et al. v. Isys Solutions, Inc.*, Case No. RG10550517 (Alameda Sup. Ct.);
- *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. No. 34-2017-00211553 (Sac. Sup. Ct.);
- *Valencia v. Lowbrau Bier Garten, LLC, et al.*, Case No. 34-2019-00258038 (Sac Sup. Ct.);
- *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.);
- *Williams v. Civic Development Group*, Case No. 06AS00267 (Sac. Sup. Ct.); and
- *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

20. The preceding list also does not include those cases where, for various reasons, the case was filed as a class action and/or PAGA action, but did not maintain that status through the end of the case.

21. In connection with any final approval hearing, I will be seeking attorneys' fees and costs, an Enhancement Payment to the Class Representative, and Settlement Administrator Costs as set forth in the Agreement. I will be requesting attorneys' fees and costs pursuant to the common fund doctrine as I believe it to be applicable to the present case pursuant to *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977), *Laffitte v. Robert Half Internat. Inc.*, 1 Cal.5th 480 (2016), and *Paul, Johnson, Alston & Hunt v. Graulity*, 886 F.2d 268, 271 (9th Cir. 1989). The facts and case law supporting the requested amounts will be set forth in the final approval motion, including information for the Court to perform a lodestar cross check of the requested attorney's fees, quantify the amount of time spent by Plaintiff on this case and any further risks and/or burdens incurred as a result of acting as Class Representative, an

1 updated declaration in support of actual litigation costs and itemized cost spreadsheet, and declaration
2 from the Settlement Administrator detailing the work performed and Settlement Administrator Costs
3 incurred. My firm's expected costs through final approval are not expected to exceed \$6,000. Attached
4 as Exhibit E is a true and correct copy of the costs incurred prior to the filing of this Motion and the
5 expected costs incurred through the final approval and fairness hearing. Any difference in the awarded
6 fees and costs, Class Representative's Enhancement Payment, and Settlement Administrator Costs and
7 the amounts allocated for each under the Agreement will be added back to the Net Settlement Amount
8 and distributed pro rata to Class Members.

9 22. I have used several class action administrator companies in the wage and hour class
10 actions I have resolved in the past and believe ILYM Group, Inc. will provide the best service to
11 administer the proposed class settlement. ILYM Group, Inc. has provided a quote for the estimated
12 maximum cost of administering the class settlement of approximately \$5,100. A true and correct copy
13 of a cost estimate provided by ILYM Group, Inc. is filed with this Motion as Exhibit D. This is only an
14 estimate, and final pricing may vary depending on the issues, if any, that arise during the administration
15 of the settlement. However, the difference between the actual, lesser costs and \$10,000, if any, will be
16 paid to the Participating Class Members on a pro rata basis.

17 23. A copy of the Agreement and the entire Motion was submitted to the LWDA for review
18 at the same time the Motion was submitted to the Court pursuant to California Labor Code section
19 2699(1)(2). A true and correct copy of documents demonstrating the settlement documents were
20 provided to the LWDA and that the LWDA has confirmed receipt are being filed with this Motion as
21 Exhibit G.

22 24. A true and correct copy of the proposed Notice of Settlement is being filed with this
23 Motion as Exhibit F.

24 25. The designated *cy pres* beneficiaries in this case are Capital Pro Bono, Inc. ("CPB") and
25 The Center For Workers Rights ("CFWR"). Only those funds that remain from uncashed settlement
26 checks will be sent to the *cy pres* beneficiaries pursuant to section 5.6 of the Agreement.

27 26. CPB is a 501(c)(3) nonprofit in good standing with the State of California that was
28 established in 1981 and incorporated in 1986 to provide free civil legal services to the indigent,

1 primarily through the use of volunteer attorneys. The formal service area includes Sacramento, Yolo,
2 San Joaquin, El Dorado and Placer counties, however it also regularly provides assistance, whether in
3 person or by phone, to individuals residing outside those counties, including Solano, Nevada, Merced,
4 Sutter, Yuba, and Stanislaus counties. CPB changed its name in 2020 from Voluntary Legal Services
5 Program of Northern California (“VLSP”) to Capital Pro Bono, Inc. CPB has been the recipient of *cy*
6 *pres* funds from several jurisdictions in the State of California, including from Sacramento County
7 Superior Court.

8 27. If CPB is approved as a *cy pres* beneficiary, any funds received will be dedicated to the
9 Employment Law Clinic and Advice Line project, which assists the indigent with legal matters related to
10 their current or former employment. This assistance regularly includes, but is not limited to, free legal
11 advice regarding claims for unpaid wages, failure to provide meal and rest periods, failure to pay
12 reimbursement, and waiting time penalty claims. CPB provides legal advice, assistance with legal
13 forms, and direct representation in administrative hearings, including administrative hearings in front of
14 the California Labor Commissioner for unpaid wages. CPB has a staff attorney and clinic coordinator
15 who provide assistance, along with experienced employment law attorney volunteers. These services
16 have been a focus of the Employment Law Clinic and Advice Line project since its inception with VLSP
17 and continuing through today under CPB.

18 28. CFWR is also a qualified *cy pres* designee in class actions, under section 384, as it is a
19 501(c)(3) nonprofit in good standing with the State of California providing free civil legal services to the
20 indigent. Since its inception in 2014 and in partnership with Legal Aid at Work, the CFWR offers one-
21 on-one legal consultations for low-wage workers. The CFWR discusses employment issues with
22 workers and advises them as to the available legal remedies. In addition to individual counseling on
23 employment issues, the CFWR educates workers, unions, and community members about workplace
24 laws and remedies through “Know-Your-Rights” trainings conducted by the CFWR staff and volunteers.

25 29. The CFWR provides limited representation for low-wage workers in wage claims before
26 the California Labor Commissioner. The CFWR has provided services to low-wage workers in a variety
27 of industries across the entire state of California. CFWR primarily focuses on the enforcement of basic
28 workplace protections, including claims for unpaid wages, minimum wage violations, failure to pay

1 overtime, failure to pay reimbursement, waiting time penalties, and meal and rest period violations. The
2 CFWR helps workers navigate the wage claim process before the California Labor Commissioner
3 through advice given at its legal consultation clinics and/or, in some cases, through representing workers
4 in these claims. If the CFWR is approved as a *cy pres* beneficiary, the funds received will be dedicated
5 towards assisting low-wage workers with wage claims and enforcing the California Labor Code with
6 respect to those wage claims.

7 30. I believe the services provided by CPB and the CFWR promote the law consistent with
8 the objective of wage and hour class actions in general and in this case specifically.

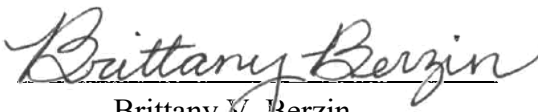
9 31. I have spoken with every other attorney at my firm to determine whether they have any
10 relationship with either of the proposed *cy pres* beneficiaries.

11 32. I have never done any work, volunteer or otherwise with Capital Pro Bono, Inc. During
12 law school, I was a student volunteer for the CFWR for two summers. Since graduating law school, I
13 have volunteered for the CFWR approximately one to two times per year, assisting in the advice clinic.
14 Recently, I volunteered to be on the Board of Directors and am currently the Chair, which is an unpaid
15 position. As Chair, I am one of six Board Members, who are all from different law firms and/or local
16 public and private organizations. No compensation or benefits, monetary or otherwise, are provided to
17 any Board Member or organization a Board Member is associated with. The Executive Director of the
18 CFWR supervises, directs, and controls the day-to-day operations of the CFWR, not myself or the Board
19 of Directors. As Chair, my additional duties include scheduling meetings, drafting meeting agendas and
20 presiding over meetings. Furthermore, CFWR has not, and does not, provide any referrals to Shimoda
21 & Rodriguez Law, P.C. Justin Rodriguez has volunteered for both CPB and the CFWR numerous times
22 over the past several years, either directly in the advice clinics or by presenting seminars on wage and
23 hour laws for law students seeking to also volunteer at advice clinics. He has also volunteered by sitting
24 on CPB's advisory committee. Mr. Rodriguez has never received payment or compensation of any kind
25 in connection with any work he's done with the CPB or CFWR. Galen T. Shimoda has volunteered for
26 both organizations on and off over the past several years through either presenting wage and hour
27 seminars to law students who staff the free advice clinics or helping at the advice clinics themselves.
28 However, Mr. Shimoda has not performed any volunteer work with either organization since

1 approximately March 2020. Mr. Shimoda has never received payment or compensation of any kind in
2 connection with any work he's done with CPB or CFWR.

3 33. Neither my firm, myself, Mr. Rodriguez nor Mr. Shimoda have not received any
4 compensation, direct or indirect, for designating CFWR or CPB as *cy pres* beneficiaries or in connection
5 with any of the volunteer work we have done with the organizations.

6 I declare under penalty of perjury under the laws of the State of California that the foregoing is
7 true and correct. Executed on June 27, 2023 in Elk Grove, California.

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11 Brittany V. Berzin
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Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
Brittany V. Berzin (Cal. State Bar No. 325121)
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Attorneys for Plaintiff KHALIL MCGHEE

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

KHALIL MCGHEE, individually and on
behalf of all other similarly situated
employees,

Plaintiff,

vs.

SALUTE INCORPORATED, a Michigan
Corporation; and DOES 1 to 100, inclusive,

Defendants.

Case No. 34-2022-00315317

CLASS ACTION

**EXHIBIT LIST AND EXHIBITS IN
SUPPORT OF PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Reservation No.: 2721356

Date: July 21, 2023

Time: 9:00 a.m.

Dept.: 28

Judge: Hon. Lauri A. Damrell

Filed: February 10, 2022

FAC Filed: April 25, 2022

Trial Date: None Set

<u>EXHIBIT</u>	<u>DESCRIPTION</u>
A	Class Action and PAGA Settlement Agreement and Release
B	Plaintiff's Operative Complaint
C	Plaintiff's Letters to the LWDA Regarding PAGA Claims
D	ILYM Group, Inc. Quote
E	Plaintiff's Itemized Costs
F	Proposed Notice of Settlement
G	Proof of Submission of Proposed Settlement Agreement to LWDA

Dated: June 26, 2023

Shimoda & Rodriguez Law, PC

By: *Brittany Berzin*
 Galen T. Shimoda
 Justin P. Rodriguez
 Brittany V. Berzin
 Attorneys for Plaintiff

EXHIBIT A

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CRITICAL LLC (formerly known as
SALUTE INCORPORATED)

SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

KHALIL MCGHEE, individually and on behalf
of all other similarly situated employees,

Plaintiff,

vs.

SALUTE INCORPORATED, a Michigan
Corporation; and DOES 1 to 100, inclusive,

Defendants.

Case No.: 34-2022-00315317

**CLASS ACTION AND PAGA SETTLEMENT
AGREEMENT AND RELEASE**

Filed: February 10, 2022

FAC Filed: April 25, 2022

Trial Date: None Set

1 This Class Action and PAGA Settlement Agreement and Release is made and entered into between
2 the Plaintiff Khalil McGhee ("Plaintiff"), on behalf of himself, Class Members, and Aggrieved Employees,
3 and Defendant Salute Mission Critical, LLC (formerly known as Salute Incorporated) ("Defendant"). This
4 Agreement is subject to the terms and conditions set forth below and the approval of the Court.

5 **1. DEFINITIONS**

6 The following terms, when used in this Agreement, have the following meanings:

7 1.1 "Action" means the above stated lawsuit, *McGhee v. Salute Incorporated*, Sacramento
8 County Superior Court, Case No. 34-2022-00315317, filed February 10, 2022.

9 1.2 "Aggrieved Employee(s)" means all non-exempt employees who have or continue to work
10 for Defendant in California during the PAGA Claim Period.

11 1.3 "Agreement" or "Settlement" or "Settlement Agreement" means this Class Action and
12 PAGA Settlement Agreement and Release.

13 1.4 "Class Counsel" means Galen T. Shimoda, Justin P. Rodriguez and Brittany V. Berzin of
14 Shimoda & Rodriguez Law, PC.

15 1.5 "Class Data" means a list of all Class Members that includes name, social security number,
16 last known address, last known telephone number and dates of employment worked in the Class Period.
17 The Settlement Administrator shall maintain the Class Data as confidential and it will not be provided to
18 Class Counsel.

19 1.6 "Class Member(s)" means any and all non-exempt employees who have worked, or
20 continue to work, for Defendant in California during the Class Period.

21 1.7 "Class Period" means February 10, 2018 up to either: (1) the Preliminary Approval Date,
22 or (2) July 24, 2023, whichever is earlier.

23 1.8 "Class Representative" means Plaintiff Khalil McGhee.

24 1.9 "Complaint" means the operative Complaint on file in the Action with the Court.

25 1.10 "Court" means the Sacramento County Superior Court.

26 1.11 "Defendant" means Salute Mission Critical LLC, which was formerly known as Salute
27 Incorporated.

1.12 “Defendant’s Counsel” means Britney N. Torres and Douglas L. Ropel of Littler Mendelson P.C.

1.13 “Enhancement Payment” means the amount approved by the Court to be paid to the Class Representative in recognition of the time and effort expended on behalf of Class Members for the benefit of Class Members, which is in addition to any Individual Settlement Amount paid to the Class Representative as a Participating Class Member.

1.14 “Effective Date” means the Final Approval Date unless there is a timely objection lodged that has not later been withdrawn, in which case the Effective Date will be either (a) the 60th calendar day after a signed order approving this settlement has been filed provided no appellate proceeding having been filed; or (b) seventh (7th) calendar day after any appellate proceeding opposing the settlement has been finally dismissed with no material change to the terms of this settlement and there is no right to pursue further remedies or relief, whichever is later.

1.15 “Final Approval Date” means the date a signed order granting final approval of this Agreement is filed with the Court.

1.16 “Gross Settlement Amount” is the sum of One Hundred Twenty-Five Thousand Dollars and Zero Cents (\$125,000.00).

1.17 “Individual Settlement Amount” means an individual Class Member’s and Aggrieved Employee’s allocation of the Net Settlement Amount and 25% of the PAGA Payment, respectively, as defined in Sections 1.20, 1.24, 5.5, and 5.8.

1.18 “LWDA” means the California Labor and Workforce Development Agency.

1.19 “Net Settlement Amount” is the portion of the Gross Settlement Amount available for distribution to Class Members, as described in this Agreement, after deduction of Class Counsel’s attorneys’ fees and litigation costs, Settlement Administrator Costs, the PAGA Payment, and Enhancement Payment to the Class Representative.

1.20 “Notice of Settlement” means the document substantially in the form attached hereto as Exhibit 1.

1.21 “Notice Period” means forty-five (45) calendar days from the initial mailing of the Notice of Settlement to Class Members and Aggrieved Employees.

1.22 “PAGA” means Private Attorneys General Act.

1.23 “PAGA Payment” means the amount allocated from the Gross Settlement Amount towards resolving claims under the Private Attorneys General Act of 2004, California Labor Code §§ 2698 *et seq.*, as further defined in Section 5.5.

1.24 “PAGA Claim Period” means from December 17, 2020 up to either (1) the Preliminary Approval Date, or (2) July 24, 2023, whichever is earlier.

1.25 “Parties” mean Defendant and Plaintiff.

1.26 “Participating Class Member” means any and all Class Members who have not made any timely request to opt-out of the Agreement.

1.27 “Preliminary Approval Date” means the date a signed order granting preliminary approval of this Agreement is filed with the Court.

1.28 “QSF” means a Qualified Settlement Fund set up by the Settlement Administrator for the benefit of the Participating Class Members and/or Aggrieved Employees and from which the payments under this Agreement shall be made. Any amounts Defendant has agreed to pay under this Agreement shall remain the property of Defendant until the payments required under the Agreement are made.

1.29 “Qualifying Pay Periods” are pay periods worked by Class Members and/or Aggrieved Employees during the Class Period and/or PAGA Claim Period, respectively, in California. The calculation of a Class Member’s and/or Aggrieved Employee’s pay periods and a determination as to whether a Class Member and/or Aggrieved Employee was actively employed in California in a particular pay period shall be construed from Defendant’s records.

1.30 “Released Class Claims” means any and all class claims that are alleged in the Complaint and LWDA letters, and any additional wage and hour claims that could have been brought based on the facts alleged in the Complaint and LWDA letters, through the Class Period, including claims for failure to pay overtime wages, failure to pay minimum wages, meal period violations, rest period violations, wage statement violations, waiting time penalties, failure to reimburse expenses, and unfair competition claims based on the foregoing, including without limitation any claims asserted in the Complaint and LWDA letters, and any additional wage and hour claims that could have been brought based on the facts alleged in the Complaint and LWDA letters under California Labor Code §§ 201-204, 210, 226, 226.3, 226.7, 510,

512, 1194, 1197.1, 2802, the applicable Wage Orders of the Industrial and Welfare Commission (the “IWC”), and California Business and Professions Code § 17200, *et seq.*, and includes all types of relief available based on the above-referenced released claims, including any claims for damages, restitution, losses, penalties, fines, liens, attorneys’ fees and costs under Code of Civil Procedure § 1021.5 or otherwise, expenses, debts, interest, injunctive relief, declaratory relief, liquidated damages, or any other related relief of any nature. This release excludes the release of claims not permitted by law. The Released Class Claims exclude claims for workers’ compensation or unemployment insurance benefits. This release will cover all Class Members who do not opt out.

1.31 “Released PAGA Claims” means any and all claims that were brought under the Private Attorneys General Act, Labor Code §§ 2698 *et seq.*, contained in the Complaint and LWDA letters and any additional wage and hour PAGA claims that could have been brought based on the facts alleged in the Complaint and LWDA letters during the PAGA Claim Period, including penalties based on alleged failure to pay overtime wages, failure to pay minimum wages, meal period violations, rest period violations, wage statement violations, waiting time penalties, failure to reimburse expenses, including without limitation any claims for PAGA penalties asserted in the Complaint and LWDA letters, and any additional wage and hour PAGA claims that could have been brought based on the facts alleged in the Complaint and LWDA letters under California Labor Code §§201-204, 210, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1194, 1197.1, 2802, and the applicable Wage Orders of the Industrial and Welfare Commission the IWC. Aggrieved Employees cannot opt out of this waiver of claims.

1.32 “Released Parties” means Defendant, Defendant’s present and former parent companies, subsidiaries, and related or affiliated companies, as well as Defendant’s officers, shareholders, directors, agents, employees, attorneys, insurers, successors and assigns, and any individual or entity that could be liable for any of the claims raised in the Complaint.

1.33 “Settlement Administrator” means and refers to ILYM Group, Inc., the third-party entity that will administer the Agreement as outlined in Sections 4 and 7, or any other third-party administrator agreed to by the Parties and approved by the Court for the purposes of administering this Agreement. The Parties each represent that they do not have any financial interest in the Settlement Administrator.

1.34 "Settlement Administrator Costs" means the fees and expenses reasonably incurred by the Settlement Administrator as a result of the procedures and processes expressly required by this Agreement, and shall include all costs of administering the Agreement, including, but not limited to, all tax document preparation, custodial fees, and accounting fees incurred by the Settlement Administrator; all costs and fees associated with preparing, issuing and mailing any and all notices and other correspondence to Class Members and/or Aggrieved Employees; all costs and fees associated with communicating with Class Members and/or Aggrieved Employees, Class Counsel, and Defendant's Counsel; all costs and fees associated with computing, processing, reviewing, and paying the Individual Settlement Amounts, and resolving disputes; all costs and fees associated with calculating tax withholdings and payroll taxes, if any, making related payment to federal and state tax authorities, if any, and issuing tax forms relating to payments made under the Agreement; all costs and fees associated with preparing any tax returns and any other filings required by any governmental taxing authority or agency; all costs and fees associated with preparing any other notices, reports, or filings to be prepared in the course of administering Individual Settlement Amounts; and any other costs and fees incurred and/or charged by the Settlement Administrator in connection with the execution of its duties under this Agreement.

2. DESCRIPTION OF THE LITIGATION

2.1 On December 17, 2021, Plaintiff sent notice to the LWDA to exhaust administrative remedies under the PAGA for failure to provide meal periods or pay premiums in lieu thereof, failure to provide rest periods or pay premiums in lieu thereof, failure to provide accurate wage statements, failure to pay final wages, failure to pay reimbursements for expenses, violation of provisions regulating hours and days of work in the Labor Code and/or in any industrial welfare commission order, failure to maintain accurate records, untimely payment of wages, and failure to pay overtime wages. On February 9, 2022, Plaintiff sent an amended notice to the LWDA to add a claim for failure to pay minimum wages. The LWDA did not respond to the notices within the statutorily required time frame and, as such, Plaintiff became authorized to act as a Private Attorneys General on all alleged PAGA claims.

2.2 On February 10, 2022, Plaintiff filed a Complaint in Sacramento County Superior Court on behalf of himself and Class Members alleging claims for failure to pay overtime wages, failure to pay minimum wages, meal period violations, rest period violations, wage statement violations, waiting time

1 penalties, failure to reimburse expenses, and unfair competition. Plaintiff filed a First Amended Complaint
2 on April 25, 2022 to add a PAGA cause of action based on the violations alleged in the notices sent to the
3 LWDA.

4 2.3 Through informal discovery, Defendant and Defendant's Counsel provided Class Counsel
5 with copies of all applicable versions of its policies and procedures, employee handbooks, information on
6 Class Members including, but not limited to, Class Members' pay periods, dates of employment, total
7 number of Class Members, their rates of pay, and pay periods as well as timecard data and payroll reports
8 for a randomly selected sample of Class Members.

9 2.4 After Class Counsel received the data, the Parties engaged in settlement negotiations over
10 the course of 13 months before reaching a resolution. At all times, the Parties' settlement negotiations
11 have been non-collusive, adversarial, and at arm's length.

12 2.5 Discussions between Plaintiff and Class Counsel and between counsel for the Parties,
13 document productions, extensive legal analysis, the provision of information by Defendant to Plaintiff and
14 the detailed analysis of the records, including expert analysis, have permitted each side to assess the relative
15 merits of the claims and the defenses to those claims.

16 2.6 In the Action, Plaintiff contends that Defendant violated California law by 1) failing to
17 compensate Class Members for time spent during required weekly meetings and time spent outside of their
18 scheduled shifts waiting for relief (*i.e.*, the next employee to arrive at the work location); 2) failing to
19 provide Class Members with duty-free meal and rest periods; and 3) failing to reimburse Class Members
20 for the use of their personal cellphones for work. The wage statement, waiting time, and unfair competition
21 claims are derivative. Defendant has denied each of Plaintiff's claims and Defendant has denied that this
22 Action is appropriate for class certification for anything other than settlement purposes. The agreed upon
23 Gross Settlement Amount was reached after thoroughly evaluating the Parties' theories of liability and
24 potential exposure for the underlying claims, along with the class data supporting these claims. The Parties
25 also assessed appropriate discounts to the potential liability based on Defendant's factual and legal
26 contentions and defenses.

27 2.7 The Parties agree that the above-described investigation and evaluation, as well as discovery
28 and the information exchanged to date, are more than sufficient to assess the merits of the respective

1 Parties' positions and to compromise the issues on a fair and equitable basis. Plaintiff, Class Counsel,
2 Defendant, and Defendant's Counsel have concluded that it is desirable that the Action be settled in a
3 manner and upon such terms and conditions set forth herein in order to avoid further expense,
4 inconvenience and distraction of further legal proceedings, and the risk of an adverse outcome each of the
5 Parties potentially face in the Action. Therefore, the Parties desire to resolve the claims in the Action.
6 Plaintiff, Class Counsel, Defendant, and Defendant's Counsel are of the opinion that the Agreement for the
7 consideration and terms set forth herein is fair, reasonable, and adequate in light of all known facts and
8 circumstances.

9 **3. THE CONDITIONAL NATURE OF THIS AGREEMENT**

10 3.1 This Agreement and all associated exhibits or attachments are made for the sole purpose of
11 settling the Action. This Agreement and the settlement it evidences are made in compromise of disputed
12 claims. Because the Action was pled as a class action, this Agreement must receive preliminary and final
13 approval by the Court. Accordingly, the Parties enter into this Agreement and associated settlement on a
14 conditional basis. If the Effective Date does not occur, or if the Court's approval of the settlement is
15 reversed or materially modified on appellate review, this Agreement shall be deemed null and void; it shall
16 be of no force or effect whatsoever; it shall not be referred to or utilized for any purpose whatsoever; and
17 the negotiation, terms and entry of the Agreement shall remain subject to the provisions of California
18 Evidence Code Sections 1119 and 1152, Federal Rule of Evidence 408, and any other analogous rules of
19 evidence that may be applicable.

20 3.2 Defendant has denied all claims as to liability, damages, liquidated damages, penalties,
21 interest, fees, restitution, injunctive relief and all other forms of relief asserted in the Action. Defendant
22 has agreed to resolve the Action via this Agreement, but to the extent this Agreement is deemed void or
23 the Effective Date does not occur, Defendant does not waive, but rather expressly reserves, all rights to
24 challenge all such claims and allegations in the Action upon all procedural and factual grounds, including,
25 without limitation, the ability to challenge class or representative treatment on any grounds, as well as to
26 assert any and all other potential defenses or privileges.

1 **4. SCOPE OF THE CLASS**

2 4.1 The scope of the class of individuals encompassed under the Agreement and subject to all
3 obligations and duties required under the Agreement, shall include all Class Members as defined in Section
4 1.5 and all Aggrieved Employees as defined in Section 1.2. However, it shall not include any Class
5 Members who submit valid and timely requests to opt-out of the Agreement and settlement, as set forth in
6 Section 7.5.1.

7 4.2 Only Participating Class Members and all Aggrieved Employees are entitled to recover
8 under this Agreement.

9 4.3 Any person who believes that he or she is a Class Member or Aggrieved Employee and
10 wishes to participate in the Agreement, but did not receive a Notice of Settlement because his or her name
11 did not appear on the Class List provided to the Settlement Administrator prior to mailing, may submit a
12 data request to the Settlement Administrator. The data request must contain all of the following
13 information: (a) the full name and, if applicable, Social Security Number of the individual making the
14 request; (b) the name used by such employee as of the time his or her employment with Defendant ended;
15 (c) the individual's dates of employment with Defendant; and (d) a return address to which a response may
16 be sent. Every data request must be postmarked on or before the conclusion of the Notice Period or
17 otherwise submitted to the Settlement Administrator such that it is received before the conclusion of the
18 Notice Period. Upon receipt of any data request, the Settlement Administrator shall promptly (in no event
19 more than two business days) transmit the data request to Defendant's Counsel and request that Defendant
20 review its records. The data request will not be provided to Class Counsel.

21 4.4 If Defendant agrees that the person listed in a data request is a Class Member and/or
22 Aggrieved Employee, the Settlement Administrator shall promptly mail a Notice of Settlement to the
23 person who submitted the data request, at the address designated for that purpose in the data request. All
24 provisions of this Agreement relating to the Notice of Settlement shall apply to Notice of Settlements sent
25 in response to data requests, and any person who submits a data request and is sent a Notice of Settlement
26 in response shall be treated by the Settlement Administrator as a Class Member and/or Aggrieved
27 Employee for all other purposes.

1 4.5 If Defendant does not agree that the person listed in a data request is a Class Member and/or
2 Aggrieved Employee, Defendant's Counsel and Class Counsel shall attempt to resolve any such dispute in
3 good faith within seven (7) calendar days of Class Counsel being advised in writing of the data request
4 dispute. Defendant's records shall control unless the individual submitting the data request provides
5 persuasive evidence to doubt the accuracy of those records. Each data request dispute that Defendant's
6 Counsel and Class Counsel cannot timely resolve shall be resolved by the Settlement Administrator. The
7 Settlement Administrator must accept and weigh all the evidence provided in a good faith attempt to resolve
8 the dispute. The Settlement Administrator must resolve any dispute submitted to it within seven (7)
9 calendar days after Defendant's Counsel and Class Counsel submit the dispute to the Settlement
10 Administrator. The decision by the Settlement Administrator shall be final as between the Parties, subject
11 to Court review.

12 **5. TERMS OF THE SETTLEMENT**

13 The Parties agree as follows:

14 5.1 Gross Settlement Amount: In consideration and exchange for the releases described in
15 Section 6, Defendant shall pay the Gross Settlement Amount (\$125,000). Funding of the Gross Settlement
16 Amount shall occur within 21 calendar days after the Effective Date or of receiving employer-side tax
17 calculations and wire instructions, whichever is later, to be held in trust in a QSF by the Settlement
18 Administrator. The Gross Settlement Amount includes payments to Participating Class Members, all
19 Aggrieved Employees, all attorneys' fees, costs and litigation expenses related to the Action incurred to
20 date, as well as all such fees and costs incurred in documenting the Agreement, administering the
21 Agreement (including Settlement Administrator Costs), and obtaining final approval of the Agreement, the
22 Enhancement Payment to the Class Representative and the PAGA Payment. Any monies necessary to
23 satisfy Defendant's tax obligations (*e.g.* employer FICA, FUTA and SDI contributions on wage payments)
24 on any monies distributed to Participating Class Members will be paid in addition to the Gross Settlement
25 Amount.

26 5.2 Attorneys' Fees and Costs: Class Counsel will apply to the Court for attorney's fees of 35%
27 of the Gross Settlement Amount, which shall be paid from the Gross Settlement Amount. Defendant has
28 agreed to not oppose Class Counsel's application for attorneys' fees so long as it does not exceed the 35%

1 threshold. Class Counsel will also be entitled to reimbursement for advanced litigation expenses not to
2 exceed \$6,000, which shall be paid from the Gross Settlement Amount. Defendant has agreed to not oppose
3 Class Counsel's request for reimbursement for advanced litigation expenses so long as they do not exceed
4 the \$6,000 threshold. The Settlement Administrator will issue Class Counsel an IRS Form 1099 for the
5 attorneys' fees and costs paid under this Agreement. In the event that the Court awards less than the
6 requested attorney's fees and/or costs, the portion of the requested amounts not awarded to Class Counsel
7 shall be added to the Net Settlement Amount to be distributed to Participating Class Members on a pro rata
8 basis.

9 5.3 Settlement Administrator Costs: The Settlement Administrator Costs shall be paid from the
10 Gross Settlement Amount and shall not exceed \$10,000. The difference between any actual costs and the
11 allocated \$10,000 shall be added to the Net Settlement Amount to be distributed to Participating Class
12 Members on a pro rata basis.

13 5.4 Enhancement Payment: Class Counsel, on behalf of Plaintiff, shall apply to the Court for
14 an Enhancement Payment to the Class Representative in an amount not to exceed Ten Thousand Dollars
15 (\$10,000) to compensate for the risks, time, and expense of his involvement in the Action and securing the
16 benefits of this Agreement for Class Members. The Enhancement Payment is in addition to the Individual
17 Settlement Amount Plaintiff would otherwise be due under the Agreement as a Participating Class Member.
18 Defendant has agreed to not oppose Class Counsel's request for an Enhancement Payment to Plaintiff so
19 long as it does not exceed the amount stated herein. The Enhancement Payment will be designated as a
20 non-wage payment and reported on an IRS Form 1099-MISC. In the event that the Court awards less than
21 the Enhancement Payment amount requested, then any portion of the requested amount not awarded to the
22 Class Representative shall be added to the Net Settlement Amount to be distributed to Participating Class
23 Members on a pro rata basis.

24 5.5 PAGA Payment: Ten Thousand Dollars (\$10,000) of the Gross Settlement Amount shall
25 be allocated to resolving claims under the PAGA. Seventy-Five percent (75%) of the PAGA Payment will
26 be paid to the LWDA and Twenty-Five percent (25%) will be paid to Aggrieved Employees on a pro rata
27 basis as described below in Section 5.8. Any amount not approved by the Court for the allocated PAGA
28

1 Payment shall be added to the Net Settlement Amount to be distributed to Participating Class Members on
2 a pro rata basis.

3 5.6 Treatment of Residue and Cy Pres: For any portion of the Net Settlement Amount or PAGA
4 Payment allocated to Participating Class Members and/or Aggrieved Employees that are not claimed by
5 cashing their respective settlement checks before the deadline to do so, that remaining amount shall be
6 donated equally, *i.e.* 50/50, to Capital Pro Bono, Inc., and the Center for Workers' Rights under the doctrine
7 of *cy pres*. No portion of the Gross Settlement Amount will revert to Defendant for any reason.

8 5.7 No Additional Benefits Contributions: All Individual Settlement Amounts paid to
9 Participating Class Members and Aggrieved Employees shall be deemed to be income solely in the year in
10 which such amounts were actually received. It is expressly understood and agreed that the receipt of such
11 Individual Settlement Amounts will not entitle any Participating Class Member or Aggrieved Employee to
12 any new or additional compensation or benefits under any company bonus or other compensation or benefit
13 plan or agreement in place during the period covered by the Agreement, nor will it entitle any Participating
14 Class Member Aggrieved Employee to any increased retirement, 401(k) and/or 403(b) benefits or matching
15 benefits, or deferred compensation benefits. It is the intent of this Agreement that the Individual Settlement
16 Amounts provided for in this Agreement are the sole payments to be made by Defendant to the Participating
17 Class Members and Aggrieved Employees in connection with this Agreement (notwithstanding any
18 contrary language or agreement in any benefit or compensation plan document that might have been in
19 effect during the period covered by this Agreement).

20 5.8 Pro Rata Distribution Formula: Payment to Participating Class Members and Aggrieved
21 Employees of their Individual Settlement Amount will not require the submission of a claim form. A Net
22 Settlement Amount will be determined by subtracting from the Gross Settlement Amount any amounts for
23 approved attorneys' fees and costs, any Enhancement Payment to the Class Representative, the Settlement
24 Administrator Costs, and the PAGA Payment.

25 5.8.1 Each Class Member's share will be initially determined by dividing their total
26 Qualifying Pay Periods within the Class Period by the total Qualifying Pay Periods
27 of all Class Members. That fraction will then be multiplied by the Net Settlement
28 Amount to arrive at the Class Member's individual share of the Net Settlement

Amount. Any funds allocated to Class Members under this formula who timely opt out of the Settlement will be redistributed to Participating Class Members on a pro rata basis, *i.e.*, each Participating Class Member's share will be determined by dividing their total Qualifying Pay Periods within the Class Period by the total Qualifying Pay Periods of all Participating Class Members and that fraction will then be multiplied by the Net Settlement Amount to arrive at the Participating Class Member's individual share of the Net Settlement Amount.

5.8.2 Each Aggrieved Employee's share of the 25% portion of the PAGA Payment will be determined by dividing their total Qualifying Pay Periods within the PAGA Claim Period by the total Qualifying Pay Periods by all Aggrieved Employees within the PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the Aggrieved Employee's individual share. Because there is no right to opt out of a PAGA settlement, a timely opt out of the Settlement by a Class Member would not result in a change to the payments due under this Settlement as an Aggrieved Employee.

5.9 Tax Allocation: The Parties recognize that the Individual Settlement Amounts to be paid to Participating Class Members and/or Aggrieved Employees reflect a settlement of a dispute over claimed penalties and wages. The Settlement Administrator shall calculate the employer's share of payroll taxes on the amounts paid to Participating Class Members as wages as well as calculating all required withholdings and deductions from said wage payments. The characterization of Individual Settlement Amounts to Participating Class Members and Aggrieved Employees are as follows:

5.9.1 Twenty percent (20%) of each Participating Class Members' Individual Settlement Amount shall be allocated for payment of disputed wages and shall be subject to required employer taxes. Participating Class Members shall receive an IRS Form W-2 for reporting of this portion of their Individual Settlement Amount.

5.9.2 Eighty percent (80%) of each Participating Class Members' Individual Settlement Amount shall be allocated for disputed statutory penalties and interest, and no amount shall be deducted

1 for any taxes. This portion of the Individual Settlement Amount consists of other income, not wages, for
2 which the Participating Class Members shall receive an IRS Form 1099-MISC.

3 5.9.3 The entirety (100%) of each Aggrieved Employee's share of the 25% portion of the
4 PAGA Payment shall be allocated for payment of disputed civil penalties, and no amount shall be deducted
5 for any taxes. This portion of the Individual Settlement Amount consists of other income, not wages, for
6 which the Aggrieved Employees shall receive an IRS Form 1099-MISC.

7 5.10 Participating Class Members and all Aggrieved Employees shall be solely responsible for
8 the reporting and payment of their share of any federal, state and/or municipal income or other taxes on
9 payments made pursuant to this Agreement, and shall hold the Parties, Class Counsel, and Defendant's
10 Counsel free and harmless from any claims resulting from treatment of such payments as non-taxable,
11 including the treatment of such payments as not subject to withholding or deduction for payroll and
12 employment taxes. No party has made any representation to any of the other Parties as to the taxability of
13 any payments pursuant to this Agreement, including the payments to Participating Class Members, the
14 payments to Aggrieved Employees, the payments to Class Counsel, the payments to the Class
15 Representative, the payroll tax liability of Defendant, or the allocation of the Net Settlement Amount or
16 PAGA Payment to wage and non-wage income as provided in this Section, or otherwise as to tax
17 implications of any provision of this Agreement.

18 5.11 No Additional Contribution by Defendant: Defendant's monetary obligation under this
19 Agreement is limited to the Gross Settlement Amount and any employer side payroll taxes owed on
20 amounts characterized as wages under this Agreement. All other costs and expenses arising out of or in
21 connection with the performance of this Agreement shall be paid from the Gross Settlement Amount, unless
22 expressly provided otherwise herein. However, in the event this agreement is deemed null and void as
23 described in Section 3 because the Court, in its independent determination, finds that the Agreement does
24 not meet the standards for settlement approval, then Defendant and Plaintiff shall be equally responsible
25 for the costs of the Settlement Administrator incurred between the date the Agreement was executed and
26 the date of such event.

1 5.12 Certification For Settlement Purposes: The Parties agree that, for purposes of settlement
2 only, certification of the class as defined in Section 1.6 and 4.1 is appropriate and the requisites for
3 establishing class certification have been met and are met.

4 5.13 Adequacy of Class Counsel and Class Representative: The Parties agree that, for purposes
5 of settlement only, Class Counsel and Plaintiff are adequate representatives for Class Members and
6 Aggrieved Employees.

7 **6. RELEASE**

8 6.1 Release of Claims by Participating Class Members: Upon the Effective Date, all
9 Participating Class Members will be deemed to fully, finally and forever release the Released Class Claims
10 as to all Released Parties. In addition, on the Effective Date, all Participating Class Members and their
11 successors in interest will be permanently enjoined and forever barred from prosecuting any of Released
12 Class Claims against any of the Released Parties.

13 6.2 Release of Claims by Aggrieved Employees: Upon the Effective Date, all Aggrieved
14 Employees will be deemed to fully, finally and forever release the Released PAGA Claims as to all
15 Released Parties. In addition, on the Effective Date, all Aggrieved Employees and their successors in
16 interest will be permanently enjoined and forever barred from prosecuting any of the Released PAGA
17 Claims against any of the Released Parties.

18 6.3 Release of Claims by Class Representative: In addition to discharging the Released Claims
19 as set forth in Sections 6.1 and 6.2 above, to the maximum extent allowed by law, Class Representative
20 will be deemed to have released claims as follows: Class Representative hereby fully and finally releases
21 and discharges the Released Parties from any and all claims, charges, complaints, liens, demands, causes
22 of action, obligations, damages and liabilities, known or unknown, suspected or unsuspected, that the Class
23 Representative had, now has, or may hereafter claim to have against the Released Parties arising out of, or
24 relating in any way to, the Class Representative's hiring by, employment with, or otherwise relating to the
25 Released Parties ("Class Representative's Released Claims"), arising or accruing from the beginning of
26 time up through the date of the Final Approval Hearing. The Class Representative's Released Claims
27 include, but are not limited to, claims arising from or dependent on the California Labor Code, the Wage
28 Orders of the California Industrial Welfare Commission, California Business and Professions Code Section

1 17200, *et seq.*, California Labor Code Private Attorneys General Act of 2004, Labor Code § 2699, *et seq.*,
2 the California Fair Employment and Housing Act, Cal. Gov't Code Section 12900 *et seq.*, the California
3 common law of contract and tort, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities
4 Act, 42 U.S.C. Section 12101 *et seq.*, the Employee Retirement Income Security Act of 1974, 29 U.S.C.
5 Section 1001 *et seq.*, the Fair Labor Standards Act, 29 U.S.C. Section 201 *et seq.* and the Portal to Portal
6 Act, 29 U.S.C. Section 251, *et seq.*, except for such claims that cannot be released by law.

7 In this regard, the Class Representative waives California Civil Code Section 1542, which
8 provides:

9 **A general release does not extend to claims that the creditor**
10 **or releasing party does not know or suspect to exist in his or**
11 **her favor at the time of executing the release and that, if**
12 **known by him or her, would have materially affected his or**
13 **her settlement with the debtor or released party.**

14 7. SETTLEMENT ADMINISTRATION

15 7.1 Duties of Settlement Administrator: The Settlement Administrator shall be responsible for:
16 1) receiving Class Member and Aggrieved Employee contact information and confirming addresses are
17 valid; 2) calculating estimated Individual Settlement Amounts and any and all taxes associated with the
18 Individual Settlement Amounts, including employer taxes; 3) taking appropriate steps to trace and locate
19 any individual Class Members and Aggrieved Employee whose address or contact information as provided
20 to the Settlement Administrator is inaccurate or outdated, and mailing the Notice of Settlement to Class
21 Members; 4) providing notification to the appropriate state and federal officials of this Agreement as
22 required under the law; 5) receiving, independently reviewing, and resolving any challenges (in
23 consultation with Class Counsel and Defendant's Counsel) from Class Members or Aggrieved Employees,
24 including any associated documentation, regarding their Qualified Pay Period calculations; 6) receiving
25 and serving on Class Counsel, Defendant's Counsel, and the Court, copies of any written objections, and/or
26 any opt out statements; 7) establishing a toll free telephone line and responding to inquiries and requests
27 for information or assistance from Class Members and/or Aggrieved Employees; 8) maintaining a QSF;
28 9) determining and paying the final amounts due to be paid under the Agreement after resolution of all
challenges, disputes, opt-outs, awarded attorneys' fees and costs, Settlement Administrator Costs, PAGA

1 Payment, taxes, any Enhancement Payments, and for funds that cannot be distributed due to the inability
2 to locate Class Members or Aggrieved Employees; 10) determining the validity of any disputes or late opt-
3 outs by previously unidentified Class Members or Aggrieved Employees; 11) paying any residual funds
4 from uncashed checks; 12) reporting to Class Counsel and Defendant's Counsel regarding the statistics of
5 the administration, including (a) the number of initial Notice of Settlements mailed; (b) the number of
6 forwarded Notice of Settlements; (c) the number of re-mailed Notice of Settlements; (d) the number of
7 total undeliverable Notice of Settlements; (e) the number of address traces performed for undeliverable
8 Notice of Settlements; (f) the number of Notice of Settlements undeliverable from traced addresses; (g) the
9 number of total objections received; (h) the number of opt-out requests received; (i) the number of disputes
10 received; (j) the number of disputes resolved; 13) providing a declaration to the Court regarding the final
11 statistics of the administration and compliance with all payment obligations under the Agreement;
12 14) completing all necessary tax reporting on the QSF and payment of the Individual Settlement Amounts
13 to Participating Class Members and Aggrieved Employees; and 15) carrying out other related tasks as
14 necessary to effectuate the terms of this Agreement and any Order of the Court. All disputes relating to
15 the Settlement Administrator's ability and need to perform its duties shall be referred to the Court, if
16 necessary, which will have continuing jurisdiction over the terms and conditions of this Agreement, until
17 all payments and obligations contemplated by the Agreement have been fully executed.

18 7.2 Notice to Class Members and Aggrieved Employees: Defendant represents and warrants
19 that Class Members and Aggrieved Employees are able to read and write in English such that no translation
20 of the Notice of Settlement into another language is necessary. The Notice of Settlement will provide Class
21 Members and Aggrieved Employees with a summary of the terms and conditions of the Agreement, how
22 to participate in the settlement, how to object to the Agreement, how to dispute the individual's Qualifying
23 Pay Periods, and how to opt-out from the Agreement. The Notice of Settlement will also inform Class
24 Members and Aggrieved Employees of the Gross Settlement Amount, Net Settlement Amount, proposed
25 attorneys' fees and costs allocations, any proposed Enhancement Payments, proposed Settlement
26 Administrator Cost allocations, proposed PAGA Payment allocations, the scope of the class, the nature and
27 extent of the released claims, dates set for a fairness hearing and hearing on Class Counsels' motion for
28 attorneys' fees and costs. The Notice of Settlement shall include information regarding Class Member's

1 and Aggrieved Employee's estimated Individual Settlement Amount. The Notice of Settlement will
2 provide information on how to access electronic copies online of the Notice of Settlement, any motions for
3 approval of the Agreement, any motions for approval of attorneys' fees and costs, and any other documents
4 as the Court directs.

5 7.3 Class Data and Mailing: No later than fourteen (14) calendar days after the Preliminary
6 Approval Date, Defendant shall provide the Settlement Administrator with the Class Data. The Settlement
7 Administrator shall review the Class Data to determine the number of Qualifying Pay Periods for each
8 Class Member and Aggrieved Employee. No later than seven (7) calendar days after receipt of the Class
9 Data, the Settlement Administrator will perform a national change of address ("NCOA") search, update
10 the addresses per the results of the NCOA search, and then mail the Notice of Settlement, substantially in
11 the form attached as Exhibit 1, to each Class Member and Aggrieved Employee by first-class mail, postage
12 prepaid. The Settlement Administrator shall maintain all information received from Defendant confidential
13 to itself, and Defendant's Counsel. However, Class Counsel shall be able to review the breakdown of
14 Qualified Pay Periods and estimated Individual Settlement Amounts for Class Members and Aggrieved
15 Employees prior to mailing for quality assurance provided the personal identifying information is redacted
16 and/or omitted.

17 7.4 Returned and/or Re-mailed Notice of Settlements: In the event that a Notice of Settlement
18 is returned to the Settlement Administrator as undeliverable on or before the conclusion of the Notice
19 Period, the Notice of Settlement shall be sent to the forwarding address affixed thereto within five (5)
20 calendar days. If no forwarding address is provided, then the Settlement Administrator shall promptly
21 attempt to determine a correct address using a skip-trace, computer or other search using the name, address
22 and/or Social Security number of the individual involved, and shall then perform a single re-mailing within
23 five (5) calendar days to any more recent address found as a result of the search. Following each search
24 that does not result in a corrected address, for those Class Members who appear to be current employees
25 of Defendant at the time of the Preliminary Approval Date, the Settlement Administrator shall contact
26 Defendant's Counsel for assistance and Defendant shall cooperate in good faith with the Settlement
27 Administrator's reasonable efforts to obtain valid mailing addresses for Class Members to the extent they
28 are active' employees of Defendant. In the event the Notice of Settlement is forwarded to a new address

and/or re-mailed to a Class Member, the deadline for the Class Member to submit any request to opt-out, a dispute' or an objection shall be the end of the Notice Period or 10 days from the date of the re-mailing/forwarding to a new address, whichever is later. In the event the procedures in this Section are followed and the Class Member does not timely and properly request to opt-out, the Class Member shall be bound by all terms of the Agreement, including the releases contained in Section 6.

7.5 Responses to Notice of Settlement:

7.5.1 *Opt-Outs:* The Notice of Settlement shall provide that Class Members who wish to exclude themselves from the Agreement must submit a request to opt-out as provided in this Section. The request to opt-out must (a) state the Class Member's full name and date of birth; (b) a statement that he or she does not want to be a Class Member, does not want to participate in the settlement, and/or wants to be excluded from the settlement; (c) identify the case name and number (*i.e.*, *McGhee v. Salute Incorporated*, Case No. 34-2022-00315317); (d) be signed; and (e) be post-marked no later than the conclusion of the Notice Period or the re-mailing timeline stated in Section 7.4. The Class Member must personally sign the request to opt-out. No request to opt-out may be made on behalf of a group of Class Members. The date of the postmark on the return-mailing envelope shall be the exclusive means used to determine whether a request to opt-out has been timely submitted. Any Class Member who requests to opt-out of the Agreement will not be entitled to any portion of the Net Settlement Amount nor will they have any right to object, appeal or comment thereon. The name of any Class Member who submits a valid and timely opt out request will be specifically identified in any proposed order granting final approval. Class Members who fail to submit a valid and timely request to opt-out shall be bound by all terms of the Agreement and any order or final judgment thereon. Regardless of whether an Aggrieved Employee opts out of being a Class Member, they will still receive their share of the PAGA Payment, as Aggrieved Employees cannot opt out of this Agreement as it relates to the PAGA Payment or Released PAGA Claims.

7.5.2 *Objection Procedures:* Any Class Member who does not opt-out but who wishes to object to this Agreement or otherwise to be heard concerning this Agreement shall send their written objections to the Settlement Administrator, and also serve copies of the objections on Class Counsel and Defendant's Counsel. The Notice of Settlement shall make clear that the Court can only approve or deny the Agreement, not change the terms of the Agreement. The objection must (a) state the Class Member's

1 full name and date of birth; (b) provide evidence that the individual is, in fact, a Class Member; (c) state
2 the reasons for the objection(s), including any supporting documentation; (d) identify the case name and
3 number (*i.e.*, *McGhee v. Salute Incorporated*, Case No. 34-2022-00315317) (e) be signed; and (f) be post-
4 marked no later than the conclusion of the Notice Period or the re-mailing timeline stated in Section 7.4.
5 The Notice of Settlement will inform the Class Member that they should also file a notice of intent to
6 appear with the Court and serve the notice on Class Counsel and Defendant's Counsel, if they intend to
7 appear at the final approval hearing.

8 7.5.3 *Dispute Procedures:* Any Class Member who disputes the number of Qualifying
9 Pay Periods on the Notice of Settlement shall contact the Settlement Administrator. The dispute must
10 (a) identify the nature of the dispute; (b) provide any information or documentation supporting the dispute;
11 (c) be signed; and (d) be post-marked no later than the conclusion of the Notice Period or the re-mailing
12 timeline stated in Section 7.4. The Settlement Administrator shall promptly (in no event more than two
13 business days) forward all such disputes to Defendant's Counsel and request that Defendant review the
14 dispute. Defendant's records shall presumptively control unless the Class Member can produce
15 documentation evidencing other periods of employment worked. If Defendant agrees with submitted
16 information, the Class Member shall be credited or subtracted Qualifying Pay Periods in accordance with
17 their submitted dispute and that final number of Qualified Pay Periods shall govern the calculation of that
18 Class Member's Individual Settlement Amount. If Defendant disagrees with the submitted information,
19 Defendant's Counsel will promptly advise Class Counsel of the dispute, which includes turning over any
20 documentation submitted by the Class Member as part of the dispute. Defendant's Counsel and Class
21 Counsel shall attempt in good faith to resolve any such dispute within five (5) calendar days of Class
22 Counsel being advised of the dispute. Each dispute that Defendant's Counsel and Class Counsel cannot
23 timely resolve shall be resolved by the Settlement Administrator, subject to Court review.

24 7.5.4 *Deficient Opt-Outs, Objections, or Disputes:* In the event that a deficient opt-out,
25 objection, or dispute is received on or before the conclusion of the Notice Period, the Settlement
26 Administrator shall mail a letter to the Class Member within five (5) calendar days informing them of the
27 deficiency. If a deficiency letter is mailed to a Class Member, the deadline for the Class Member to cure
28

the deficiency shall be the end of the Notice Period or 10 calendar days from the date of the deficiency letter, whichever is later.

7.6 Due Process Acknowledgement: Compliance with the procedures set forth in Sections 7.1 to 7.5.4 shall constitute due and sufficient notice to Class Members of the Action and the Agreement and shall satisfy Class Members' due process rights. Nothing else shall be required of the Parties, Class Counsel or Defendant's Counsel to provide notice of the proposed Agreement.

7.7 Settlement Administrator Declaration Regarding Notice Period: Within seven (7) calendar days after the conclusion of the Notice Period, the Settlement Administrator shall provide Class Counsel and Defendant's Counsel with a signed declaration under penalty of perjury providing a complete and detailed report regarding the statistics and responses of settlement administration to date and all the Settlement Administrators' obligations under Sections 5.8 to 5.9.3 and 7.1 to 7.5.4.

7.8 Settlement Administrator Payments to Participating Class Members, Class Counsel and Plaintiff: By the Final Approval Date, Defendant will provide the Settlement Administrator with all necessary information to complete employer-side tax calculations. Within seven (7) calendar days after the Effective Date and the Court's determination of the amount of attorneys' fees and costs payable to Class Counsel, the Enhancement Payment payable to Plaintiff, the PAGA Payment, and Settlement Administrator Costs, the Settlement Administrator shall calculate the final Net Settlement Amount, the final Individual Settlement Amounts for Participating Class Members and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations to Class Counsel and Defendant's Counsel. Defendant shall wire the Gross Settlement Amount and applicable taxes necessary to fund the Settlement, as described in Section 5.1, to the Settlement Administrator within twenty-one (21) calendar days after the Effective Date or of receiving employer-side tax calculations and wire instructions, whichever is later, to be to be held in trust in a QSF. Within seven (7) calendar days after Defendant funds the settlement, the Settlement Administrator shall deliver payment of Class Counsels' attorney's fees and costs, the Enhancement Payment payable to Plaintiff, the 75% portion of the PAGA Payment payable to the LWDA, Settlement Administrator Costs, and payment to Participating Class Members and/or Aggrieved Employees as required under this Agreement and approved by Court.

1 7.8.1 The Settlement Administrator shall wire the Court-approved attorneys' fees and
2 costs to Class Counsel unless another method is requested by Class Counsel. Class Counsel shall provide
3 the Settlement Administrator with the pertinent taxpayer identification number and payment instructions
4 after the Final Approval Date.

5 7.8.2 The Settlement Administrator shall send a check by mail for the Court-approved
6 Enhancement Payment to the Class Representative, care of Class Counsel unless another method is
7 requested by Class Counsel.

8 7.8.3 Only Participating Class Members and all Aggrieved Employees will receive their
9 Individual Settlement Amount.

10 7.8.4 The Settlement Administrator shall remit and report the applicable portions of the
11 payroll tax payment to the appropriate taxing authorities on a timely basis pursuant to its duties under this
12 Agreement. Defendant agrees to reasonably cooperate with the Settlement Administrator to the extent
13 necessary to determine the amount of the payroll tax payment required.

14 7.9 Settlement Check Expiration and Uncashed Checks: The Settlement Administrator shall
15 issue Individual Settlement Amounts to Participating Class Members and Aggrieved Employees in the
16 form of a check, which shall become null and void if not deposited within one hundred eighty (180)
17 calendar days of issuance. After one hundred eighty (180) calendar days of issuance, the checks shall be
18 voided and funds from all uncashed checks shall be transmitted in accordance with Section 5.6. The
19 Settlement Administrator shall deliver these funds within fourteen (14) calendar days after the check
20 cashing deadline.

21 7.10 Settlement Administrator Declaration Regarding Compliance and Settlement
22 Administration: Within twenty-one (21) calendar days after the last day for Participating Class Members
23 and Aggrieved Employees to cash their settlement checks, the Settlement Administrator shall provide Class
24 Counsel and Defendant's Counsel with a signed declaration under penalty of perjury providing a complete
25 and detailed report regarding the settlement administration documenting that all payments under the
26 Agreement have been made, that the Court's final approval order has been complied with, and that all the
27 obligations of the Settlement Administrator have been completed.

8. PRELIMINARY SETTLEMENT ADMINISTRATION SCHEDULE

8.1 The schedule may be modified depending on whether and when the Court grants necessary approvals, orders notice to Class Members and Aggrieved Employees, and sets further hearings. The schedule may also be modified to correct clerical errors and to reflect the provisions in the Agreement as described above. In the event of such modification, the Parties shall cooperate to complete the settlement procedures as expeditiously as reasonably practicable. The preliminary schedule for notice, approval, and payment procedures carrying out the Agreement is as follows:

Last day for Defendant to provide Settlement Administrator with Class Data	Within 14 calendar days after the Preliminary Approval Date
Last day for Settlement Administrator to complete NCOA search, update Class Member and Aggrieved Employee mailing information, and mail Notice of Settlement	Within 7 calendar days after the Settlement Administrators' receipt of Class Data
Last day for Class Members to opt-out, submit disputes, submit objections, and submit data requests	45 calendar days after mailing of Notice of Settlement or within 10 days after Notice of Settlement is re-mailed, whichever is later
Last day for Settlement Administrator to provide Parties with signed declaration reporting on settlement administration statistics	Within 7 calendar days after end of the Notice Period
Last day for Defendant to provide Settlement Administrator with all necessary information to complete employer-side tax calculations	By the Final Approval Date
Last day for Settlement Administrator to calculate the final Net Settlement Amount, the final Individual Settlement Amounts for Participating Class Members and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations to Class Counsel and Defendant's Counsel	Within 7 calendar days after the Effective Date
Last day for Defendant to fund settlement	Within 21 calendar days after the Effective Date or of receiving employer-side tax calculations and wire instructions, whichever is later

Last day for Settlement Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payments, PAGA Payment, Settlement Administrator Costs, payment to Participating Class Members, and payment to Aggrieved Employees	Within 7 calendar days after Defendant has funded the settlement
Last day for Participating Class Members and Aggrieved Employees to cash settlement checks	180 calendar days after issuance of checks to Participating Class Members and Aggrieved Employees
Last day for Settlement Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries	Within 14 calendar days after settlement check cashing deadline
Last day for Settlement Administrator to provide Parties with compliance declaration	Within 21 calendar days after settlement check cashing deadline

9. DUTIES OF THE PARTIES

9.1 Preliminary Approval: The Parties will cooperate in obtaining, through an unopposed motion to be filed as soon as reasonably practicable, an order from the Court preliminarily approving this Agreement at the earliest possible date concurrently with the Court's certification of the Action as a class action for settlement purposes. The Parties further agree to fully cooperate in the drafting and/or filing of any further documents or filings reasonably necessary to be prepared or filed, shall take all steps that may be requested by the Court relating to, or that are otherwise necessary to the approval and implementation of this Agreement and shall otherwise use their respective best efforts to obtain certification for settlement purposes, approval of, and implementation of this Agreement. The Parties will submit this Agreement to the Court for preliminary approval of its terms and for approval of the steps to be taken to obtain its final approval. Within one week of signing this Agreement, Class Counsel shall provide a draft of the Preliminary Approval Motion to Defendant's Counsel. Defendant's Counsel will provide comments and/or proposed revisions within one week after receipt of the draft Preliminary Approval Motion from Class Counsel. With regard to the final approval documents, a similar one-week maximum review and response time shall be observed by the Parties. The Parties will request that the Court's preliminary approval of this

1 Agreement be embodied in an Order Granting Preliminary Approval of Class Action and PAGA
2 Settlement.

3 9.1.1 Plaintiff's motion shall seek an order: 1) Preliminarily approving the Agreement;
4 2) Approving as to form and content the proposed Notice of Settlement; 3) Directing the mailing of the
5 Notice of Settlement by first class mail to Class Members and Aggrieved Employees; 4) Preliminarily
6 appointing Plaintiff and Class Counsel as representatives of Class Members; 5) Preliminarily approving
7 settlement administration services to be provided by the Settlement Administrator; 6) Preliminarily
8 approving the proposed Enhancement Payment to Plaintiff; 7) Preliminarily approving the application for
9 payment of reasonable attorneys' fees and reimbursement of litigation-related expenses to Class Counsel;
10 and 8) Scheduling a fairness hearing on the question of whether the proposed Agreement should be finally
11 approved as fair, reasonable and adequate as to the Class Members.

12 9.1.2 Defendant shall not oppose Plaintiff's motion for approval of the proposed
13 Agreement.

14 9.1.3 The Parties shall cooperate with each other and the Settlement Administrator during
15 the process of giving Class Members notice and opportunity to object to the Agreement, as necessary and
16 appropriate to assure effective communication to individual Class Members of information about their
17 rights and obligations under this Agreement.

18 9.2 Final Approval and Fairness Hearing: On a date approved by the Court and set forth in the
19 Notice of Settlement, the Court shall hold the Final Approval and Fairness Hearing where objections, if
20 any, may be heard. Class Counsel shall provide the Court as part of the motion for final approval of the
21 Agreement, a declaration by the Settlement Administrator of due diligence and proof of mailing of the
22 Notice of Settlement required to be mailed to Class Members by this Agreement, and of the delivery results
23 of the Claim Administrator's mailings including tracing and re-mailing efforts.

24 9.2.1 Class Counsel and Defendant shall work in good faith to draft a mutually agreeable
25 Proposed Order Granting Final Approval of Class Action and PAGA Settlement and Final Judgment. The
26 Proposed Order Granting Final Approval of Class Action and PAGA Settlement and Final Judgment shall
27 include findings and orders: 1) Approving the Agreement, adjudging the terms thereof to be fair, reasonable
28 and adequate, and directing that its terms and provisions be carried out; 2) Approving the payment of an

Enhancement Payment to the Class Representative; 3) Approving Class Counsel's application for an award of attorneys' fees and reimbursement of out-of-pocket litigation expenses; 4) Approving the Settlement Administrator Costs; and 5) Providing that the Court will retain jurisdiction to oversee administration and enforcement of the terms of the Agreement and the Court's orders.

9.2.2 Following entry of the Court's order granting final approval of the Agreement, the Parties will each act to ensure the fulfillment of all its provisions, including but not limited to the following:

1) Should an appeal be taken from the final approval of the Agreement or motion to set aside the judgement be filed, all parties will support the final approval order on appeal or otherwise; 2) Class Counsel will assist the Settlement Administrator as needed or requested in the process of identifying and locating Participating Class Members and Aggrieved Employees entitled to payments under the Agreement and assuring delivery of such payments; 3) Class Counsel and Defendant's Counsel will cooperate with each other and assist the Settlement Administrator as needed or requested in completing the distribution of any residual amounts, as specified above, to the *cy pres* beneficiaries; 4) Class Counsel, in conjunction with the Settlement Administrator, will certify to the Court completion of all payments required to be made by this Agreement.

9.3 Final Judgment: If the Court approves this Agreement at the final approval and fairness hearing, the Parties will request that the Court enter an Order Granting Final Approval of Class Action and PAGA Settlement and Final Judgment.

9.4 Notice to LWDA: Plaintiff will provide notice to the Labor and Workforce Development Agency ("LWDA") of this settlement in accordance with Labor Code § 2699(1)(2).

10. MISCELLANEOUS TERMS

10.1 Defendants Right to Withdraw Based on Opt-Outs: If, prior to the Final Approval Date, 10% or more of the Class Members have submitted proper and timely requests to opt-out in accordance with the provisions of the Agreement, Defendant may rescind the Agreement and all actions taken in its furtherance will be thereby null and void. Defendant must exercise this right of rescission, in writing, to Class Counsel, within seven (7) calendar days after the Settlement Administrator notifies the Parties of the total number of opt-outs. If the option to rescind is exercised, then any Settlement Administrator Costs shall be paid by Defendant.

1 10.2 Escalator Clause: Defendant has represented that there are no more than 1,648 pay periods
2 during the Class Period. In the event the number of pay periods during the Class Period is more than
3 1,813 (*i.e.*, greater than 10% more than 1,648), then the Gross Settlement Amount shall be increased
4 proportionally by the pay periods in excess of 1,813 (*i.e.*, if the actual pay periods in the Class Period
5 were 15% greater than 1,648, the Gross Settlement Amount would be increased by 5%). For example, if
6 there were 1,895 pay periods in the Class Period, the Gross Settlement Amount would be increased by
7 5% (*i.e.*, $\$125,000 \times 1.05 = \$131,250$).

8 10.3 Circular 230 Disclaimer: EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF
9 THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS AGREEMENT
10 OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND
11 AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN
12 COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR
13 ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH
14 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON
15 AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT
16 CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS
17 RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX
18 COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS
19 AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE
20 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY
21 OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR
22 DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX
23 PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
24 ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT
25 PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY’S OR ADVISER’S TAX
26 STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON
27 DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX
28

1 STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY
2 THIS AGREEMENT.

3 10.4 No Prior Assignments: The Parties represent, covenant, and warrant that they have not
4 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to
5 any person or entity any portion of any liability, claim, demand, action, cause of action or right released
6 and discharged in this Agreement.

7 10.5 Waiver of Appeal and Ability to Opt Out: To the extent permitted by applicable law, by
8 signing this Agreement Defendant is waiving any rights to appeal from the Court's approval of the
9 settlement unless the Court materially modifies the settlement. Furthermore, by signing this Agreement
10 Plaintiff is waiving any right or ability to opt out of this Agreement during the Notice Period or otherwise.

11 10.6 Exhibits Incorporated by Reference: The terms of this Agreement include the terms set
12 forth in any attached Exhibits, which are incorporated by this reference as though fully set forth in this
13 Agreement. Any Exhibits to this Agreement are an integral part of the Settlement.

14 10.7 Judgment and Retention of Jurisdiction to Enforce: Upon the Effective Date, judgment will
15 be entered according to this Agreement. The Parties stipulate and agree that the Sacramento County
16 Superior Court shall have continuing jurisdiction to enforce the terms of the Agreement pursuant to Code
17 of Civil Procedure section 664.6 and that the prevailing party any action necessary to enforce the terms of
18 the Agreement after default by the other party may recover reasonable attorney's fees and costs related
19 thereto.

20 10.8 Mutual Cooperation: The Parties agree to cooperate fully with one another to accomplish
21 and implement the terms of this Agreement. Such cooperation shall include, but not be limited to, execution
22 of such other documents and the taking of such other action as may reasonably be necessary to fulfill the
23 terms of this Agreement. The Parties to this Agreement shall use their best efforts, including all efforts
24 contemplated by this Agreement and any other efforts that may become necessary by Court order, or
25 otherwise, to effectuate this Agreement and the terms set forth herein.

26 10.9 No Admission of Liability: Neither the acceptance nor the performance by Defendant of
27 the terms of this Agreement, nor any of the related negotiations or proceedings, is or shall be claimed to
28 be, construed as, or deemed to be, an admission by Defendant of the truth of any of the allegations in the

1 Complaint, the representative character of the Action, the validity of any of the claims that were or could
2 have been asserted by Plaintiff and/or Class Members in the Action, or of any liability or guilt of Defendant
3 in the Action. Nothing in this Agreement shall be construed to be or deemed an admission by Defendant
4 of any liability, culpability, negligence, or wrongdoing toward Plaintiff, the Class Members, or any other
5 person, and Defendant specifically disclaim any liability, culpability, negligence, or wrongdoing toward
6 Plaintiff, the Class Members, or any other person. Each of the Parties has entered into this Stipulation with
7 the intention to avoid further disputes and litigation.

8 10.10 Notices: Unless otherwise specifically provided herein, all notices, demands, or other
9 communications given hereunder shall be in writing and shall be deemed to have been duly given as of the
10 third business day after mailing by United States certified mail, return receipt requested, addressed as set
11 forth below. A courtesy copy shall be sent via email to the email addresses specified below:

12 To Plaintiff and the Class:

13 Galen T. Shimoda
14 attorney@shimodalaw.com
15 Justin P. Rodriguez
16 jrodriguez@shimodalaw.com
17 Brittany V. Berzin
18 bberzin@shimodalaw.com
19 Shimoda & Rodriguez Law, PC
20 9401 East Stockton Blvd., Suite 120
21 Elk Grove, CA 95624

22 To Defendant:

23 Britney N. Torres
24 btorres@littler.com
25 Douglas L. Ropel
26 dropel@littler.com
27 Littler Mendelson P.C.
28 500 Capitol Mall Ste. 200
Sacramento, CA 95814
Phone: (916) 830-7200
Facsimile: (916) 561-0828

10.11 Mutual Drafting of Agreement: The Parties hereto agree that the terms and conditions of
this Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that
this Agreement shall not be construed in favor of or against any party by reason of the extent to which any
party or its counsel participated in the drafting of this Agreement.

1 10.12 Attorneys' Fees and Costs Limitations: Neither Class Counsel nor any other attorneys
2 acting for, or purporting to act for, the Class, Class Members, or Plaintiff, may recover or seek to recover
3 any amounts for fees, costs, or disbursements from the Releasees or the Gross Settlement Amount except
4 as expressly provided in this Agreement.

5 10.13 No Modifications: This Agreement may be amended or modified only by a written
6 instrument signed by counsel for all Parties or their successors-in-interest. This Agreement may not be
7 discharged except by performance in accordance with its terms.

8 10.14 Authorization to Enter Into Settlement Agreement: Counsel for all Parties warrant and
9 represent they are expressly authorized by the Parties whom they represent to negotiate this Agreement and
10 to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement
11 to effectuate its terms and to execute any other documents required to effectuate the terms of this
12 Agreement.

13 10.15 Class Member Signatories: Because the Action has not yet been certified, and the Class
14 Members are so numerous, the Parties agree that it is impossible or impractical to have each Class Member
15 sign this Agreement. It is agreed that, for purposes of seeking approval of the Agreement, this Agreement
16 may be executed on behalf of all Class Members by the Class Representative.

17 10.16 Counterparts: This Agreement shall become effective upon its execution by all of the
18 undersigned. Plaintiff, Class Counsel, Defendant and Defendant's Counsel may execute this Agreement
19 in counterparts, and execution of counterparts shall have the same force and effect as if each had signed
20 the same instrument. Facsimile, electronic, and/or scanned copies of signatures shall have the same force
21 and effect of originals.

22 10.17 Choice of Law: The Agreement and any exhibits hereto shall be considered to have been
23 negotiated, executed, and delivered, and to have been wholly performed, in the State of California, and the
24 rights and obligations of the Parties to the Agreement shall be construed and enforced in accordance with,
25 and governed by, the substantive laws of the State of California without giving effect to that State's choice
26 of law principles.

1 10.18 Headings and Captions: Section titles or captions contained in the Agreement are inserted
2 as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of
3 this Agreement, or any provision thereof.

4 10.19 No Retaliation or Discouragement: The Parties agree they will take no action that could be
5 construed as retaliation against any Class Members for participating or seeking to participate in this class
6 action settlement. The Parties will not discourage any class member from participating or seeking to
7 participate in this class action settlement. This is a material term of the Agreement and non-breaching
8 Parties will seek court intervention if this provision is breached.

9 10.20 Integrated Agreement: This Agreement sets forth the entire understanding between the
10 Parties and supersedes any and all prior agreements, oral or written, pertaining to the subject matter hereof.
11 Each party acknowledges that there is no representation, inducement, promise or agreement which has been
12 made, orally or otherwise, by the other party, concerning the terms or conditions of this Agreement, which
13 is not expressly embodied in this Agreement. In entering into this Agreement, the Parties represent that the
14 terms of this Agreement are fully understood and voluntarily accepted by the Parties.

15 10.21 Binding on Successors and Assigns: This Agreement will be binding upon, and inure to the
16 benefit of, the successors or assigns of the Parties to this Agreement, as previously defined.

17 10.22 Invalidity of Any Provision: Before declaring any provision of this Agreement invalid, the
18 Court will first attempt to construe the provision as valid to the fullest extent possible consistent with
19 applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

20 10.23 Waiver of Compliance: No waiver of any condition or covenant contained in this
21 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply
22 or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

23 ///

24 ///

25 ///

26 ///

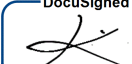
27 ///

28 ///

1 IN WITNESS WHEREOF, this Agreement is executed by the Parties and their duly authorized
2 attorneys, as of the day and year herein set forth.

3 **For Plaintiff:**

4 Date: 6/22/2023

DocuSigned by:

1CF559AC89EA43E...
Khalil McGhee

6 **For Defendant:**

7 Date: _____

8 By: _____
9 For Salute Mission Critical LLC

10
11
12 APPROVED AS TO FORM AND CONTENT

Shimoda & Rodriguez Law, PC

13 Dated: 6/22/23

14 By: 
15 Galen T. Shimoda
16 Justin P. Rodriguez
17 Brittany V. Berzin
Attorneys for Plaintiff

18 APPROVED AS TO FORM

LITTLER MENDELSON P.C.

19
20 Dated: _____

21 By: _____
22 Britney N. Torres
23 Douglas L. Ropel
24 Attorneys for Defendant

1 IN WITNESS WHEREOF, this Agreement is executed by the Parties and their duly authorized
2 attorneys, as of the day and year herein set forth.

3 **For Plaintiff:**

4 Date: _____

5 _____
Khalil McGhee

6 **For Defendant:**

7 Date: _____

8 _____
9 By:
For Salute Mission Critical LLC

10
11
12
13 APPROVED AS TO FORM AND CONTENT

Shimoda & Rodriguez Law, PC

14
15 Dated: _____

16 By: _____
Galen T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
Attorneys for Plaintiff

17
18 APPROVED AS TO FORM

LITTLER MENDELSON P.C.

19
20 Dated: 6/22/23

21 By:  _____
Britney N. Torres
Douglas L. Ropel
Attorneys for Defendant

IN WITNESS WHEREOF, this Agreement is executed by the Parties and their duly authorized attorneys, as of the day and year herein set forth.

For Plaintiff:

Date: _____

Khalil McGhee

For Defendant:

Date: 6/22/2023

DocuSigned by:
Erich Sanchez
3C52375C4E5C4E3

By:
For Salute Mission Critical LLC

APPROVED AS TO FORM AND CONTENT

Shimoda & Rodriguez Law, PC

Dated: _____

By: _____
Galen T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
Attorneys for Plaintiff

APPROVED AS TO FORM

LITTLER MENDELSON P.C.

Dated: _____

By: _____
Britney N. Torres
Douglas L. Ropel
Attorneys for Defendant

Exhibit 1

CALIFORNIA SUPERIOR COURT
FOR THE COUNTY OF SACRAMENTO

KHALIL MCGHEE individually and on behalf
of all other similarly situated employees,

Plaintiff,

vs.

SALUTE INCORPORATED, a California
Corporation; and DOES 1 to 100, inclusive,

Defendants.

Case No. 34-2022-00315317

**NOTICE OF PROPOSED CLASS ACTION
AND PAGA SETTLEMENT, AND HEARING
DATE FOR FINAL COURT APPROVAL OF
SETTLEMENT**

ATTENTION: any and all non-exempt employees who have worked, or continue to work, for Defendant in California from February 10, 2018 up to [REDACTED] (the "Class Members").

PLEASE READ THIS NOTICE CAREFULLY. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF CLASS ACTION LITIGATION AND POTENTIAL DISBURSEMENT OF SETTLEMENT FUNDS TO YOU. IF YOU ARE A CLASS MEMBER, IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHT TO PARTICIPATE IN OR OPT OUT OF THE SETTLEMENT ACCORDING TO THE PROCEDURES DESCRIBED BELOW.

You are receiving this notice pursuant to an order from the Sacramento County Superior Court ("Court") granting Plaintiff's motion for preliminary approval of a Class Action and PAGA Settlement and Release ("Agreement" or "Settlement") as fair, reasonable, and adequate. The Settlement was entered into between Khalil McGhee (hereinafter referred to as "Plaintiff" or Class Representative), and Salute Mission Critical LLC (formerly Salute Incorporated and hereinafter referred to as "Defendant") on behalf of Class Members as defined above. The terms of the Settlement are outlined herein. You are receiving this notice because Defendant's records indicate you fall within the definition of "Class Member." Defendant's records also indicate that you worked [REDACTED] pay periods during the applicable Class Period (as defined below), which means your total share of the settlement proceeds is estimated to be [REDACTED]. Your actual share of the settlement proceeds will vary depending on the total number of Class Members that choose to participate and the resolution of any pay period disputes as described in this notice.

The terms of the Agreement and a description of the case are identified in this notice. Pursuant to the Court's order, YOU ARE HEREBY NOTIFIED AS FOLLOWS:

I. BACKGROUND OF THE CASE

On February 10, 2022, Plaintiff filed a Complaint against Salute Incorporated in the Sacramento County Superior Court of California on behalf of himself and Class Members. The term "Action" means this putative class action pending in Sacramento County Superior Court, Case No. 34-2022-00315317. The Class Period is February 10, 2018 up to [REDACTED] (the "Class Period").

In the Action, Plaintiff sought to obtain unpaid wages, interest, statutory penalties, civil penalties, fees, and costs on behalf of himself, Class Members, and Aggrieved Employees. Plaintiff alleged that Defendant violated California law by 1) failing to compensate Class Members for time spent during required weekly meetings and time spent outside of their scheduled shifts waiting for relief (*i.e.*, the next employee to arrive at the work location); 2) failing to provide Class Members with duty-free meal and rest periods; and 3) failing to reimburse Class Members for the use of their personal cellphones for work. Defendant has denied all of Plaintiff's allegations. The Action has been actively litigated. There have been on-going investigations, and there has been an exchange of extensive documentation and information. Based upon the negotiations, and all known facts and circumstances, including the various risks and uncertainties related to legal actions, the Parties reached a class-wide settlement. By settling, the Parties will avoid the risks associated with a lengthy litigation process. Despite agreeing to and supporting the Agreement, Defendant continues to deny all allegations and claims. Defendant has entered into this Settlement to fully, finally, and forever resolve this Action, based on the terms set forth in the Agreement, in order to avoid the burden and expense associated with ongoing litigation.

The Agreement applies to any and all Class Members, which are defined as any and all non-exempt employees who have worked, or continue to work, for Defendant in California from February 10, 2018 up to [REDACTED]. The Agreement also applies to Aggrieved Employees, which are defined as all non-exempt employees who have or continue to work for Defendant in California from December 17, 2020 up to [REDACTED]. If you are a Class Member, you have the opportunity to participate in the Settlement, or to exclude yourself (“opt out”) from the Settlement. This notice is to advise Class Members of how they can either participate in the Settlement or be excluded from the Settlement. As set forth below, Aggrieved Employees cannot opt out of this Agreement as it relates to the PAGA Payment or Released PAGA Claims regardless of whether they opt out of being a Class Member. Aggrieved Employees will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

II. SUMMARY OF THE PROPOSED SETTLEMENT

A. The Amount of the Settlement

Under the terms of the Agreement, Defendant has agreed to pay a total sum of One Hundred Twenty-Five Thousand Dollars and Zero Cents (\$125,000.00) (“Gross Settlement Amount”). Deducted from this Gross Settlement Amount will be sums approved by the Court for attorneys’ fees not to exceed 35% of the Gross Settlement Amount, attorneys’ costs not to exceed \$6,000.00, Settlement Administrator Costs estimated not to exceed \$10,000.00, Class Representative’s Enhancement Payment of \$10,000.00, and \$10,000.00 for alleged PAGA penalties (the “PAGA Payment”), which will result in a “Net Settlement Amount” for distribution to all Class Members. Any employer side taxes attributable to payments allocated as wages will be paid by Defendant in addition to the Gross Settlement Amount. As explained further below, the amount of each Class Member’s share of the Net Settlement Amount will depend on the number of pay periods worked by participating Class Members during the Class Period. Of the \$10,000.00 allocated to resolving the PAGA claims, 75% of the PAGA Payment will be paid to the State of California Labor and Workforce Development Agency and 25% of the PAGA Payment will be divided among Aggrieved Employees.

The number of pay periods you worked during the Class Period and your estimated total share of the Net Settlement Amount and PAGA Payment (“Individual Settlement Amount”) is stated on the first page of this notice. The actual amount received may be more or less than the amount stated depending on the actual number of pay periods worked by Participating Class Members (*i.e.*, those who do not opt out of the Settlement), the resolution of any disputes regarding pay periods, and on the distributions finally approved and allocated by the Court. However, whether Class Members opt out will have no effect on Aggrieved Employees’ allocations for the PAGA claims.

B. Individual Settlement Amounts and Allocation Between Class Members and Aggrieved Employees

Defendant will pay Individual Settlement Amounts through the Settlement Administrator, as described below, to each Participating Class Member and to Aggrieved Employees. All Individual Settlement Amounts will be subject to appropriate taxation. The Parties have agreed, based on the allegations in the Action that all Individual Settlement Amounts payable to eligible Class Members will be allocated from the Net Settlement Amount and paid as 80% for disputed interest, statutory penalties, and other non-wage damages for which IRS Forms 1099-MISC and 1099-INT will issue and 20% for disputed wages for which IRS Forms W-2 will issue. The PAGA Payment to Aggrieved employees will be paid as 100% for civil penalties.

Payment to Participating Class Members and Aggrieved Employees will not require the submission of a claim form. Each Participating Class Member’s share will be determined by dividing their total pay periods worked within the Class Period by the total pay periods worked by all Participating Class Members within the Class Period. That fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member’s individual share of the Net Settlement Amount. Each Aggrieved Employee’s share of the 25% portion of the PAGA Payment will be determined by dividing their total pay periods worked within the PAGA Claim Period by the total pay periods worked by all Aggrieved Employees within the PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the Aggrieved Employee’s individual share. The PAGA Claim Period is defined as December 17, 2020 to [REDACTED]. Defendant’s records indicate that you worked [REDACTED] pay periods during the applicable PAGA Claim Period, which means your share of the PAGA Payment is estimated to be [REDACTED]. This amount is included in your estimated Individual Settlement Amount stated on the first page of this notice, not in addition to it. You will still receive your share of the PAGA Payment even if you opt out of being a Class Member. Receipt of the Individual Settlement Amounts will not entitle any Class Member or Aggrieved Employee to additional compensation or benefits under any compensation, retirement or benefit plan or agreement in place during the period covered by the Settlement.

C. Calculations to Be Based on Defendant's Records and Resolution of Pay Period Disputes

For each Class Member, the amount payable will be calculated by the Settlement Administrator from Defendant's records. Defendant's records will be presumed correct unless evidence to the contrary is provided to the Settlement Administrator. Defendant's records and any additional evidence will be reviewed by the Settlement Administrator in the event of a dispute about the number of pay periods worked by an individual Class Member. If a Class Member disputes the accuracy of Defendant's records, all supporting documents evidencing additional pay periods must be submitted by the Class Member. The dispute must (a) identify the nature of the dispute; (b) provide any information or documentation supporting the dispute; (c) be signed; and (d) be post-marked no later than [REDACTED]. The dispute will be resolved by the Settlement Administrator based on the records and evidence provided.

D. Release of Claims

For those Class Members who do not opt out and Aggrieved Employees, the Agreement contains the following releases:

Class members who do not opt out will be deemed to have released any and all class claims that are alleged in the Complaint and LWDA letters, and any additional wage and hour claims that could have been brought based on the facts alleged in the Complaint and LWDA letters, through the Class Period, including claims for failure to pay overtime wages, failure to pay minimum wages, meal period violations, rest period violations, wage statement violations, waiting time penalties, failure to reimburse expenses, and unfair competition claims based on the foregoing, including without limitation any claims asserted in the Complaint and LWDA letters, and any additional wage and hour claims that could have been brought based on the facts alleged in the Complaint and LWDA letters under California Labor Code §§ 201-204, 210, 226, 226.3, 226.7, 510, 512, 1194, 1197.1, 2802, the applicable Wage Orders of the Industrial and Welfare Commission (the "IWC"), and California Business and Professions Code § 17200, *et seq.*, and includes all types of relief available based on the above-referenced released claims, including any claims for damages, restitution, losses, penalties, fines, liens, attorneys' fees and costs under Code of Civil Procedure § 1021.5 or otherwise, expenses, debts, interest, injunctive relief, declaratory relief, liquidated damages, or any other related relief of any nature. This release excludes the release of claims not permitted by law. This release excludes claims for workers' compensation or unemployment insurance benefits. This release will cover all Class Members who do not opt out.

Aggrieved Employees will be deemed to have released any and all claims that were brought under the Private Attorneys General Act, Labor Code §§ 2698 *et seq.*, contained in the Complaint and LWDA letters and any additional wage and hour PAGA claims that could have been brought based on the facts alleged in the Complaint and LWDA letters during the PAGA Claim Period, including penalties based on alleged failure to pay overtime wages, failure to pay minimum wages, meal period violations, rest period violations, wage statement violations, waiting time penalties, failure to reimburse expenses, including without limitation any claims for PAGA penalties asserted in the Complaint and LWDA letters, and any additional wage and hour PAGA claims that could have been brought based on the facts alleged in the Complaint and LWDA letters under California Labor Code §§ 201-204, 210, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1194, 1197.1, 2802, and the applicable Wage Orders of the Industrial and Welfare Commission the IWC. Aggrieved Employees cannot opt out of this waiver of claims.

The individuals released ("Released Parties") include Defendant, Defendant's present and former parent companies, subsidiaries, and related or affiliated companies, as well as Defendant's officers, shareholders, directors, agents, employees, attorneys, insurers, successors and assigns, and any individual or entity that could be liable for any of the claims raised in the Complaint.

Class Members and/or Aggrieved Employees should direct questions about this notice, the above release, or the settlement to the Settlement Administrator appointed by the Court (phone number at the bottom of each page of this notice) or Class Counsel.

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER

A. Participating in the Settlement as a Class Member

If you wish to be a Participating Class Member and believe your pay period information is accurate, **you do not need to take any further action**. Payment will be automatically made to you consistent with the terms of the Agreement and Court Order. If you wish to dispute the pay period calculation, you may follow the procedures outlined in Section II.C above. California law protects Class Members from retaliation based on their decision to participate in the Settlement.

B. Excluding Yourself from the Settlement as a Class Member

The Court will exclude you from the being a Class Member if you request this by [REDACTED]. If you do not wish to be bound by the Settlement as a Class Member, you may request to be excluded (*i.e.*, “opt out”) by submitting a timely written request to the Settlement Administrator. The request to opt-out must (a) state your full name and date of birth; (b) a statement that you do not want to be a Class Member, do not want to participate in the Settlement, and/or want to be excluded from this Settlement; (c) identify the case name and number (*i.e.* *McGhee v. Salute Incorporated*, Case No. 34-2022-00315317); (d) be signed; and (e) be post-marked no later than [REDACTED]. The request to opt out must be mailed by First Class U.S. Mail, or the equivalent, to:

[admin info]

If you submit a request to opt out which is not postmarked by [REDACTED], your request to opt out will be rejected, and you will be bound by the release and all other terms of the Agreement. Do not use a postage meter as that may not result in a postmark appearing on the envelope containing your request to opt out. Any Class Member who submits a complete and timely request to opt out shall, upon receipt by the Settlement Administrator, no longer be a Class Member and not receive their share of the Net Settlement Amount. Aggrieved Employees cannot opt out of this Agreement and will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

C. Objection to Settlement

If you do not opt out of the Settlement, you can object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. You can ask the Court to deny approval by filing an objection. You cannot ask the Court to order a larger settlement; the Court can only grant or deny approval of the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. The objection must (a) state your full name and date of birth; (b) provide evidence that you are, in fact, a Class Member; (c) state the reasons for the objection(s), including supporting documentation; (d) identify the case name and number (*i.e.* *McGhee v. Salute Incorporated*, Case No. 34-2022-00315317) (e) be signed; and (f) be post-marked no later than [REDACTED]. The objection must be sent to the Settlement Administrator at the address identified in Section III.B and to counsel for Plaintiff and Defendant at the addresses identified in Section VI of this notice.

If you have submitted a written objection as outlined above, you may also appear at the final approval hearing to state your objection. Any Class Member who does not request exclusion may, if the Class Member so desires, enter an appearance through an attorney. If you appear through your own attorney, you are responsible for paying that attorney. You should also file a notice of intent to appear with the Court and serve the notice on counsel for Plaintiff and Defendant.

IV. EFFECT OF THE SETTLEMENT: RELEASED RIGHTS AND CLAIMS

If the Court grants final approval of the Settlement, the Court will make and enter judgment consistent therewith. The judgment will bind all Class Members who do not request exclusion. After final approval, each and every Class Member who does not opt out of the Settlement and each and every Aggrieved Employee, will release Defendant and the Released Parties from the Released Class Claims and the Released PAGA Claims, respectively, as described above. In other words, if you were employed as a Class Member by Defendant in California during the Class Period, and you do not exclude yourself from the Settlement, you will be deemed to have entered into these releases and to have released the above-described claims. In addition, you will be barred from ever suing Defendant and the Released Parties with respect to the claims covered by this Settlement. If the Settlement is not approved by the Court or does not become final for some other reason, the litigation will continue.

V. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a hearing in Department 28, 780 9th Street Sacramento, California 95814 on [REDACTED] at 9:00 a.m. to determine whether the Agreement should be finally approved as fair, reasonable and adequate. The Court also will be asked to approve Class Counsel’s request for attorneys’ fees and costs, the Settlement Administrator Costs, and the Class Representative’s Enhancement Payment. The hearing may be continued without further notice. It is not necessary for you to appear at this hearing.

VI. ADDITIONAL INFORMATION

You may access any motions for approval of the Agreement, any motions for approval of attorneys’ fees and costs, and any other

documents as the Court directs through the Court's public case access site: <https://services.saccourt.ca.gov/PublicCaseAccess/>

If you need more information or have any questions, you may contact the Settlement Administrator at the address and telephone number listed below, toll free.

McGhee v. Salute
[NAME]
[STREE ADDRESS]
[CITY, STATE ZIP]
[PHONE NUMBER]

You can also contact Class Counsel as follows:

Galent T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
Shimoda & Rodriguez Law, PC
9401 East Stockton Blvd., Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS. IF YOU HAVE ANY QUESTIONS, CALL [number]

BY ORDER OF THE COURT

EXHIBIT B

FILED
Superior Court Of California,
Sacramento
04/25/2022
nzayaad
By _____, Deputy
Case Number:
34-2022-00315317

1 Galen T. Shimoda (Cal. State Bar No. 226752)
2 Justin P. Rodriguez (Cal. State Bar No. 278275)
3 Brittany V. Berzin (Cal. State Bar No. 325121)
4 Shimoda & Rodriguez Law, PC
9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733

5 Attorneys for Plaintiff KHALIL MCGHEE

6
7
8 **SUPERIOR COURT OF CALIFORNIA**
9 **FOR THE COUNTY OF SACRAMENTO**

10 KHALIL MCGHEE, individually and on
11 behalf of all other similarly situated
12 employees,

13 Plaintiff,

14 vs.

15 SALUTE INCORPORATED, a Michigan
16 Corporation; and DOES 1 to 100, inclusive,

17 Defendants.
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Case No. 34-2022-00315317

CLASS ACTION

**FIRST AMENDED COMPLAINT FOR
DAMAGES:**

1. Failure to Pay Overtime Wages
2. Failure to Pay Minimum Wages
3. Meal Period Violations
4. Rest Period Violations
5. Wage Statement Violations
6. Waiting Time Penalties
7. Failure to Reimburse Expenses
8. Unfair Competition
9. Private Attorneys General Act

DEMAND FOR JURY TRIAL

BY FAX

1 KHALIL MCGHEE ("Plaintiff"), on behalf of himself and all other similarly situated
2 employees, hereby files this Complaint against SALUTE INCORPORATED, a Michigan
3 Corporation; and DOES 1 to 100, inclusive (SALUTE INCORPORATED and DOES 1 to 100
4 hereinafter all collectively referred to as "Defendants"). On information and belief, Plaintiff allege
5 the following:

6 **INTRODUCTION**

7 1. This is a class action and Private Attorneys General Act ("PAGA") lawsuit brought by
8 Plaintiff for failure to pay minimum wages, failure to pay overtime wages, meal and rest period
9 violations, failure to reimburse expenses, failure to provide wage statements, and unfair competition.

10 **JURISDICTION AND VENUE**

11 2. The Sacramento County Superior Court has jurisdiction in this matter pursuant to
12 California Code of Civil Procedure section 410.10 to determine alleged violations of the California
13 Labor Code, California Business and Professions Code, and Wage Order No. 4.

14 3. Venue is proper pursuant to Civil Procedure Code §§ 395(a), 395.5 and 395.2, in that
15 Defendant Salute Incorporated resides in Sacramento County and/or is a foreign entity and has not
16 designated any county in California as being where it maintains its principal office. In addition, some of
17 the wrongful acts and violations of law asserted herein occurred within Sacramento County, and
18 Defendants' obligation to pay wages arose in Sacramento County pursuant to *Madera Police Officers*
19 *Assn. v. City of Madera*, 36 Cal.3d 403, 414 (1984).

20 4. Plaintiff sought permission pursuant to Labor Code section 2699 *et seq.* to pursue the
21 claims set forth in this Complaint against Defendants as a Private Attorney General on behalf of himself
22 and other similarly situated employees. Pursuant to Labor Code section 2699.3, Plaintiff gave written
23 notice via online submission to the Labor and Workforce Development Agency ("LWDA") on
24 December 17, 2021 and February 9, 2022. Plaintiff provided facts and legal bases for his claims within
25 the notices to the LWDA on all violations asserted under the Private Attorneys General Act cause of
26 action. Plaintiff submitted the \$75.00 filing fee with his initial notice. The notices were sent via
27 certified mail to Defendants on the same day the notices were submitted to the LWDA. Plaintiff is
28 informed and believes, that to date, the LWDA has not provided any response to Plaintiff's notice

1 correspondences. Accordingly, Plaintiff is informed and believes that he has exhausted all
2 administrative remedies pursuant to the Private Attorneys General Act and may bring this action on
3 behalf of himself and all Aggrieved Employees. See Cal. Labor Code § 2699.3(a)(2)(A), (c)(3); *Caliber*
4 *Bodyworks, Inc. v. Sup. Ct.*, 134 Cal.App.4th 365, 383 n.18, 385 n.19 (2005). Aggrieved Employees
5 includes all nonexempt employees who have, or continue to, perform work for Defendants in California
6 from December 17, 2020 to the present.

7 **PARTIES**

8 5. KHALIL MCGHEE is an individual over the age of eighteen (18) and is a resident of
9 the State of California.

10 6. On information and belief, Plaintiff alleges, SALUTE INCORPORATED, is now
11 and/or at all times mentioned in this Complaint was a Michigan Corporation and the owner and
12 operator of an industry, business and/or facility doing business in the State of California.

13 7. Defendants DOES 1 through 100 are affiliates, subsidiaries and related entities and the
14 alter egos of each of the other Defendants named herein, corporate or otherwise, who participated in and
15 are liable for the actions herein alleged. Plaintiff will seek to amend this Complaint to allege the true
16 names and capacities of these DOE Defendants when they are ascertained. At all times mentioned
17 herein, each Defendant was the agent or employee of each of the other Defendants and was acting within
18 the course and scope of such agency or employment. The Defendants are jointly and severally liable to
19 Plaintiff.

20 8. Defendants, and each of them, are now and/or at all times mentioned in this Complaint
21 were members of and/or engaged in a joint employment, joint venture, partnership and common
22 enterprise, and were acting within the course and scope of, and in pursuance of said joint employment,
23 joint venture, partnership and common enterprise.

24 9. Defendants, and each of them, now and/or at all times mentioned in this Complaint
25 approved, ratified, acquiesced, aided or abetted the acts and omissions alleged in this Complaint.

26 10. Defendants proximately caused Plaintiff to be subjected to the unlawful practices,
27 wrongs, complaints, injuries and/or damages alleged in this Complaint.

28 //

CLASS ALLEGATIONS

11. Plaintiff brings the First through Eighth Causes of Action on behalf of himself, and all others similarly situated as a class action pursuant to California Code of Civil Procedure section 382.

The class which Plaintiff seeks to represent is composed of, and defined, as follows:

All non-exempt employees who have worked, or continue to work, for Defendants in California from February 10, 2018 to the present.

12. This action has been brought and may be properly maintained as a class action, pursuant to the provision of California Code of Civil Procedure section 382, because there is a well-defined community of interests in the litigation and the proposed class is easily ascertainable.

(a) Numerosity: The putative class is so numerous that the individual joinder of all members is impracticable under the circumstances of this case. While the exact number of class members is unknown to Plaintiff at this time, Plaintiff is informed and believes that Defendants have employed as many as fifty (50) individuals falling within the above stated class definition throughout the State of California during the applicable statute of limitations, who were subjected to the policies and practices outlined in this Complaint. As such, joinder of all members of the putative class is not practicable.

(b) Common Questions Predominate: Common questions of law and fact exist as to all members of the putative class and predominate over questions that affect only individual members of the class. These common questions of law and fact include, without limitation, the following:

- (1) Whether Defendants had a policy or practice to pay Plaintiff and putative class members for all hours worked, including but not limited to time spent during meetings;
- (2) Whether Defendants had a policy or practice to pay Plaintiff and putative class members at least minimum wage for each hour worked;
- (3) Whether Defendants had a policy or practice to pay Plaintiff and putative class members all overtime wages owed;
- (4) Whether Defendants authorized and permitted legally compliant meal periods;

- 1 (5) Whether Defendants authorized and permitted legally compliant rest periods;
2 (6) Whether Defendants had a policy or practice to reimburse for personal cellphone
3 for work;
4 (7) Whether as a result of Defendants' policies and practices Plaintiff's and putative
5 class members received all wages, due and owing, at the time of their termination
6 or separation; and
7 (8) Whether Defendants provided Plaintiff's and putative class members with wage
8 statements that complied with Labor Code section 226.

9 (c) Typicality: Plaintiff's claims are typical of the claims of the members of the putative
10 class. The putative class also sustained damages arising out of Defendants' common
11 course of conduct in violation of the law as complained of herein. Plaintiff and all
12 members of the putative class were non-exempt employees who were required to remain
13 on the premises and on duty during meal and rest periods. Additionally, Plaintiff and
14 putative class members were required to attend meetings each week but were not
15 compensated for that time. Defendants did not ensure Plaintiff and putative class
16 members were paid at least the minimum wage for every hour worked and overtime
17 wages for any overtime hours worked. Additionally, Defendants failed to issue Plaintiff
18 and all members of the putative class wage statements that complied Labor Code section
19 226. Defendants also failed to reimburse Plaintiff and putative class members for
20 necessary expenses incurred for work from the use of their personal cellphones. Plaintiff
21 and putative class members were required to download the ADP app on their cellphones
22 to record their hours worked. As a result, Plaintiff and each member of the putative class
23 will have suffered the same type of harm and seek the same type of recovery based on the
24 same legal theories.

25 (d) Adequacy: Plaintiff will fairly and adequately protect the interests of the members of the
26 putative class. For all relevant times, Plaintiff resided in California and worked for
27 Defendants in California. Moreover, Plaintiff is an adequate representative of the
28 putative class as Plaintiff has no interests that are adverse to those of putative class

1 members. Additionally, Plaintiff has retained counsel who has substantial experience in
2 complex civil litigation and wage and hour matters.

- 3 (e) Superiority: A class action is superior to other available means for the fair and efficient
4 adjudication of the controversy since individual joinder of all members of the putative
5 class is impracticable. Class action treatment will permit a larger number of similarly
6 situated persons to prosecute their common claims in a single forum simultaneously,
7 efficiently, and without the unnecessary duplication of effort and expense that numerous
8 individual actions would engender. Further, as damages suffered by each individual
9 member of the class may be relatively small, the expenses and burden of the individual
10 litigation would make it difficult or impossible for individual members of the class to
11 redress the wrongs done to them, and an important public interest will be served by
12 addressing the matter as a class action. The cost to the court system of adjudication of
13 such individualized litigation would be substantial. Individualized litigation would also
14 present the potential for inconsistent or contradictory judgments.

15 13. Plaintiff is unaware of any difficulties that are likely to be encountered in the
16 management of this action that would preclude its maintenance as a class action.

17 GENERAL ALLEGATIONS

18 14. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 13 as though fully
19 set forth herein.

20 15. Plaintiff worked for Defendants as a non-exempt employee from approximately June 9,
21 2021 to September 11, 2021. Plaintiff's job duties included security and electrical technician work. For
22 example, Plaintiff secured an area where high voltage equipment was kept, by reviewing security
23 monitors and patrolling. Plaintiff also performed electrical technician work when needed. Plaintiff
24 regularly worked forty (40) hours per week and/or eight (8) hours per day, or more.

25 16. Defendants failed to pay Plaintiff and similarly situated employees for all hours worked,
26 including overtime, due to its failure to compensate Plaintiff and similarly situated employees for time
27 spent during required weekly meetings and time spent outside of their scheduled shifts waiting for the
28 next security employee to arrive. Defendants required Plaintiff and similarly situated employees to

1 attend about two meetings each week that lasted around an hour. However, Defendants instructed
2 Plaintiff and similarly situated employees not to record this time.

3 17. Defendants failed to authorize and permit Plaintiff and similarly situated employees
4 to take all meal and rest periods owed to them. Defendants required Plaintiff and similarly situated
5 employees to remain on the work premises and on duty for the duration of their shifts. Plaintiff and
6 similarly situated employees were scheduled to work alone and were not relieved of any of their
7 duties for the entirety of their shifts. In fact, Plaintiff was specifically told by Defendants there were
8 "no lunches or breaks" on this job. Although Plaintiff and similarly situated employees were not
9 able to take meal periods, Defendants still required them to clock out for them. For example, when
10 Plaintiff's supervisor, Andrew Calderon, saw that Plaintiff had not clocked out for meal periods, he
11 instructed Plaintiff to clock out 30 minutes for meal periods, but then add that 30 minutes to the end
12 of the shift. Additionally, Defendants did not have any policy to provide for a second meal period or
13 third rest period when Plaintiff and similarly situated employees worked shifts longer than ten (10)
14 hours in a day.

15 18. Defendants failed to reimburse Plaintiff and similarly situated employees for personal
16 cellphone expenses incurred on behalf of Defendants. Plaintiff and similarly situated employees
17 were required to use their personal cellphones to receive and provide assignment updates, take
18 photographs of equipment, and document hours worked in the ADP application. Plaintiff and
19 similarly situated employees were not reimbursed for the use of his personal cell phone for these
20 purposes.

21 19. As a result of Defendant's failure to pay Plaintiff and similarly situated employees all
22 minimum wages, overtime wages, and meal and rest period premiums owed, the wage statements
23 Defendants issued to Plaintiff and similarly situated employees were not accurate. Specifically,
24 Defendants did not accurately list total hours worked, the correct hours worked at each rate of pay,
25 and gross and net wages.

26 20. Defendants failed to provide all final wages owed to Plaintiff and similarly situated
27 employees within twenty-four (24) hours of their termination or seventy-two (72) hours of their
28 resignation. For example, Plaintiff provided notice of his resignation to Defendants on September

1 11, 2021, but Defendants failed to provide Plaintiff with his final paycheck until September 29,
2 2021.

3 **CAUSES OF ACTION**

4 **FIRST CAUSE OF ACTION**
5 **FAILURE TO PAY OVERTIME WAGES**
6 **(As to all Defendants)**

7 21. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 20 as though fully
8 set forth herein.

9 22. During the period Plaintiff was employed by Defendants, Defendants were required to
10 compensate Plaintiff at one and one-half (1½) times the regular rate of pay for hours worked in excess of
11 eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular rate of pay for
12 hours worked in excess of twelve (12) hours per day. *See, e.g., IWC Wage Order No. 4, section (3)(A);*
13 *Cal. Lab. Code §§ 510, 1194.*

14 23. Plaintiff and similarly situated employees worked in excess of eight (8) hours per day
15 and/or forty (40) hours per week on several occasions while employed by Defendants. However,
16 Defendants failed to compensate Plaintiff and similarly situated employees for all overtime hours
17 worked at their regular rate of pay.

18 24. Plaintiff and similarly situated employees were not exempt from overtime protections
19 employees under the California Wage Orders and Labor Code.

20 25. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
21 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
22 the extent pertinent as if set forth here in full.

23 **SECOND CAUSE OF ACTION**
24 **FAILURE TO PAY MINIMUM WAGES**
25 **(As to all Defendants)**

26 26. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 25 as though fully
27 set forth herein.

28 27. For the period preceding the filing of this Complaint, Defendants were required to
compensate Plaintiff and similarly situated employees with at least California's applicable minimum for

1 every hour worked. See MW-Order 2019; IWC Wage Order, No. 4, section 4(A); Cal. Lab. Code §
2 1194.

3 28. Plaintiff and similarly situated employees were not exempt from the State's Minimum
4 Wage Order. Defendants were aware of their obligation to pay the minimum wage for each hour
5 worked but failed to do so.

6 29. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
7 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
8 the extent pertinent as if set forth here in full.

9
10 **THIRD CAUSE OF ACTION**
MEAL PERIOD VIOLATIONS
(As to all Defendants)

11 30. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 29 as though fully
12 set forth herein.

13 31. An employer must provide an employee a meal period in accordance with the
14 applicable Wage Order, and California Labor Code sections 226.7 and 512.

15 32. California Labor Code sections 226.7 and 512 and IWC Wage Order No. 4, section
16 11(A) require an employer to provide an uninterrupted meal period of not less than thirty (30)
17 minutes for each work period of more than five (5) hours.

18 33. California Labor Code section 512 and Wage Order No. 4 section 11(B) further
19 provide that employers may not employ employees for a work period for more than ten (10) hours
20 per day without providing the employee with a second meal period of at least thirty (30) minutes.
21 However, if the total hours worked is no more than twelve (12) hours, the second meal period may
22 be waived so long as there was no waiver as to the first meal period. Employees are entitled to one
23 (1) hour of pay at their regular rate of compensation for each meal period not provided.

24 34. Defendants employed Plaintiff and similarly situated employees for periods of more
25 than five (5) hours without providing duty free meal breaks of at least thirty (30) minutes or a second
26 meal period of at least thirty (30) minutes when Plaintiff and similarly situated employees worked
27 more than ten (10) hours in a day. Plaintiff and similarly situated employees did not waive their
28 rights to all meal periods throughout their employment.

35. Defendants further failed to pay Plaintiff and similarly situated employees the applicable meal period premiums for any such missed meal breaks.

36. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

FOURTH CAUSE OF ACTION
REST PERIOD VIOLATIONS
(As to all Defendants)

37. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 36 as though fully set forth herein.

38. An employer must provide an employee a rest period in accordance with the applicable Wage Order and California Labor Code section 226.7.

39. California Labor Code section 226.7 and Wage Order No. 4, section 12(A) require an employer to provide a duty-free rest period of not less than ten (10) minutes for each work period of more than four (4) hours or a major fraction thereof.

40. Plaintiff alleges that Defendants failed to authorize and permit Plaintiff and similarly situated employees to take duty-free rest periods of at least ten (10) minutes for each work period that they worked more than four (4) hours or a major fraction thereof.

41. Defendants further failed to pay Plaintiff and similarly situated employees the applicable rest period premiums for any such missed rest periods.

42. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

FIFTH CAUSE OF ACTION
WAGE STATEMENT VIOLATIONS
(As to all Defendants)

43. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 42 as though fully set forth herein.

44. Pursuant to California Labor Code section 226(a), an employer must provide an itemized statement to an employee, semimonthly or at the time of each payment of wages, showing:

1 (1) gross wages earned, (2) total hours worked by the employee, except for
2 any employee whose compensation is solely based on a salary and who is
3 exempt from payment of overtime under subdivision (a) of Section 515 or
4 any applicable order of the Industrial Welfare Commission, (3) the
5 number of piece-rate units earned and any applicable piece rate if the
6 employee is paid on a piece-rate basis, (4) all deductions, provided that
7 all deductions made on written orders of the employee may be aggregated
8 and shown as one item, (5) net wages earned, (6) the inclusive dates of the
9 period for which the employee is paid, (7) the name of the employee and
10 the last four digits of his or her social security number or an employee
11 identification number other than a social security number, (8) the name
and address of the legal entity that is the employer and, if the employer is
a farm labor contractor, as defined in subdivision (b) of Section 1682, the
name and address of the legal entity that secured the services of the
employer, and (9) all applicable hourly rates in effect during the pay
period and the corresponding number of hours worked at each hourly rate
by the employee. The deductions made from payment of wages shall be
recorded in ink or other indelible form, properly dated, showing the
month, day, and year, and a copy of the statement and the record of the
deductions shall be kept on file by the employer for at least three years at
the place of employment or at a central location within the State of
California.

12 45. Plaintiff alleges that Defendants intentionally and knowingly failed to provide an
13 itemized statement showing the requirements set forth in California Labor Code sections 226(a),
14 including total hours worked, all applicable hourly rates in effect and the hours worked at each rate
15 and gross and net wages. Plaintiff and similarly situated employees were not able to promptly and
16 easily determine their total hours worked. Additionally, Plaintiff and similarly situated employees
17 suffered confusion over whether they received all wages owed.

18 46. As a proximate result of Defendants' conduct, Plaintiff and similarly situated
19 employees have been damaged as stated in the section below entitled "DAMAGES," which is
20 incorporated here to the extent pertinent as if set forth here in full.

21 **SIXTH CAUSE OF ACTION**
22 **WAITING TIME PENALTIES**
(As to all Defendants)

23 47. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 46 as though fully
24 set forth herein.

25 48. An employer must pay an employee who is terminated all unpaid wages immediately
26 upon termination. See Cal. Lab. Code § 201.

27 49. An employer must pay an employee who resigns all unpaid wages within seventy-two
28 (72) hours of their resignation. See Cal. Lab. Code § 202.

1 50. Plaintiff and similarly situated employees did not receive all wages, including minimum
2 and overtime wages, or meal and rest period premiums, at their termination or within the required time
3 after their separation from employment.

4 51. An employer who willfully fails to pay an employee wages in accordance with California
5 Labor Code sections 201 and/or 202 must pay the employee a waiting time penalty of up to thirty (30)
6 days. See Cal. Lab. Code § 203.

7 52. Defendants knew of their obligation to pay Plaintiff's and similarly situated employees'
8 their final wages when their employment terminated. Defendants required on duty meal and rest periods
9 without paying premiums and required off the clock work that was uncompensated. Such conduct
10 shows Defendants had knowledge of earned, but unpaid wages at the time of separation, yet Defendants
11 still refused to pay the remaining wages owed.

12 53. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
13 have been damaged and deprived of their wages and thereby seek their daily rate of pay multiplied by
14 thirty (30) days for Defendants' failure to pay all wages due.

15 **SEVENTH CAUSE OF ACTION**
16 **FAILURE TO REIMBURSE EXPENSES**
(As to all Defendants)

17 54. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 53 as though fully
18 set forth herein.

19 55. California Labor Code section 2802(a) states that "An employer shall indemnify his or
20 her employee for all necessary expenditures or losses incurred by the employee in direct consequence of
21 the discharge of his or her duties, or of his or her obedience to the directions of the employer, even
22 though unlawful, unless the employee, at the time of obeying the directions, believed them to be
23 unlawful."

24 56. Defendants required Plaintiff and similarly situated employees to use their personal
25 cellphones to receive and provide assignment updates, take photographs of equipment, and document
26 hours worked in the ADP application, but failed to reimburse them for such use.

27 //

28 //

1 57. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
2 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
3 the extent pertinent as if set forth here in full.

4 **EIGHTH CAUSE OF ACTION**
5 **UNFAIR COMPETITION**
6 **(As to all Defendants)**

7 58. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 57 as though fully
8 set forth herein.

9 59. Unfair competition shall mean and include any unlawful, unfair or fraudulent business act
10 or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1
11 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code. *See*
12 California Business and Professions ("B&P") Code § 17200.

13 60. Plaintiff and similarly situated employees were not paid all wages owed, including
14 minimum and overtime wages. Moreover, through Defendants conduct Plaintiff and similarly situated
15 employees were denied statutory protections regarding meal and rest periods.

16 61. Plaintiff further allege(s) that such actions and/or conduct constitute a violation of the
17 California Unfair Competition Law ("UCL") (Business and Professions Code 17200 *et seq.*) pursuant to
18 *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4th 163 (2000).

19 62. As a direct and legal result of the Defendants' conduct, as alleged herein, pursuant to the
20 UCL (including B&P Code §17203), Plaintiff and similarly situated employees are entitled to
21 restitution, including, but not limited to, interest and penalties pursuant to Business & Professions Code
22 sections 17203, 17208, violations of California Labor Code sections 226.7, 510, 512, and 1194 all in an
23 amount as yet unascertained but subject to proof at trial, for four (4) years from the filing of this Action.

24 **NINTH CAUSE OF ACTION**
25 **PRIVATE ATTORNEYS GENERAL ACT**
26 **(As to all Defendants)**

27 63. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 62 as though fully
28 set forth herein.

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64. Plaintiff has alleged to the Labor Commissioner that Defendants have violated the following provisions of the Labor Code in their dealings with him and other similarly situated current and former employees:

- Violation of Labor Code §§ 510, 1194; IWC Wage Order 4, § 3 (Failure to Pay Overtime Wages)
- Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order No. 4, § 4 (Failure to Pay Minimum Wages)
- Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)
- Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
- Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)
- Violation of Labor Code §§ 226.7, 512; IWC Wage Order 4, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code § 226.7; IWC Wage Order 4, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)
- Violation of Labor Code § 226.3, 1174 (Failure to Maintain Accurate Records)
- Violation of Labor Code § 204, 210 (Untimely Payment of Wages)

65. Plaintiff seeks civil penalties against Defendants as provided in the Labor Code, or, if no civil penalty is provided, default penalties pursuant to Labor Code section 2699(f)(2).

66. Plaintiff seeks these civil penalties from Defendants pursuant to Labor Code sections 2699(a) and 2699.3.

DAMAGES

WHEREFORE Plaintiff requests relief as follows:

1. A jury trial;
2. As to the First Cause of Action:
 - a. Wages in an amount to be proven at trial;

- b. Interest for the wages due pursuant to California Labor Code section 1194;
- c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;

3. As to the Second Cause of Action:

- a. Wages in an amount to be proven at trial;
- b. Interest for the wages due pursuant to California Labor Code section 1194;
- c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;
- d. Liquidated damages pursuant to California Labor Code section 1194.2;

4. As to the Third Cause of Action:

- a. Wages in an amount to be proven at trial;
- b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure section 1021.5;

5. As to the Fourth Cause of Action:

- a. Wages in an amount to be proven at trial;
- b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure section 1021.5;

6. As to the Fifth Cause of Action:

- a. Penalties as provided for in Labor Code section 226, including the greater of all actual damages or fifty dollars (\$50.00) for the initial pay period in which the violation occurred and one hundred dollars (\$100.00) per employee for each violation in the subsequent pay periods, but not to exceed four thousand dollars (\$4,000.00);
- b. For reasonable attorney's fees and costs incurred pursuant to Labor Code section 226(e);

7. As to the Seventh Cause of Action:

- a. An amount to be proven at trial;
- b. For attorney's fees, interest, and costs pursuant to Labor Code section 2802(c);

1 8. As to the Ninth Cause of Action:

- 2 a. For civil penalties as provided for in the Labor Code for each enumerated
- 3 violation in an amount to be proven at trial;
- 4 b. For those Labor Code sections, the violation of which there is no civil penalty
- 5 provided, the default penalty provided in Labor Code section 2699(f): for any
- 6 initial violation, one hundred dollars (\$100) for each aggrieved employee per pay
- 7 period; For any subsequent violation, two hundred dollars (\$200) for each
- 8 aggrieved employee per pay period;
- 9 c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699;
- 10 d. For any other remedies as allowed by law and/or deemed appropriate by the
- 11 Court;
- 12 9. For such other and further relief as this Court may deem just and proper,
- 13 including, but not limited to:
- 14 a. Wages as proved at trial;
- 15 b. Injunctive and Declaratory relief;
- 16 c. Attorney's fees and costs as provided for by law; and
- 17 d. Interest.

18

19 Dated: April 22, 2022

Shimoda & Rodriguez Law, PC

20

21 By: _____

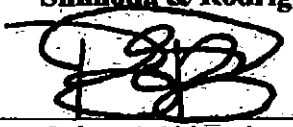

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EXHIBIT C



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December 17, 2021

For Online Filing:

Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: *McGhee v. Salute Incorporated*

Dear Labor Commissioner,

As counsel for Khalil McGhee ("Plaintiff"), I am writing to provide you and the following "employers" notice pursuant to California Labor Code section 2699.3:

Salute Incorporated
43230 Garfield Road, Suite 160
Clinton Township, MI 48038

We are setting forth the "facts and theories" to support each of the counts found within this complaint. Please notify us of your intent to investigate any or all of the claims alleged herein against Salute Incorporated ("Defendant"). Should you decide not to investigate, we request that you allow us to bring the following action on behalf of Plaintiff and all Aggrieved Employees, pursuant to Labor Code section 2699(a). Specifically, Aggrieved Employees shall include, but is not limited to the following: Aggrieved Employee: All nonexempt employees who have or continue to work for Defendant in California. Plaintiff is clearly entitled to bring a Private Attorneys General Act ("PAGA") claim for civil penalties on behalf of these individuals pursuant to *Huff v. Securitas Security Services USA, Inc.*, 23 Cal.App.5th 745, 757 (2018) (finding a plaintiff has PAGA standing if affected by one of the alleged violations; the plaintiff need not have personally experienced all the violations pursued in PAGA action).

A. FACTS

Khalil McGhee worked for Defendant from June 9, 2021 to September 11, 2021. Defendant manages and operates facilities throughout the world. Plaintiff worked as Multiskilled Operator in California. His job duties included providing security, monitor control, patrol building and providing electrical technician assistance for the McClellan Park location. Plaintiff typically worked forty (40) hours per week or more, at eight (8) hours per day or more.

Defendant failed to pay Plaintiff and other Aggrieved Employees for all hours worked, including overtime, due to its failure to accurately document Plaintiff's and Aggrieved



Employees. Defendant also failed to have Plaintiff accurately clock in and out for meal breaks. Plaintiff often worked alone so he did not have relief to go on breaks, meal or rest breaks, yet Defendant instructed Plaintiff to clock in and out for meal breaks that he was not allowed to take.

At some point, Plaintiff's supervisor, Andrew Calderon, instructed Plaintiff to clock out for lunches, but told him not to take the lunch, but to work through the break, and simply add thirty minutes to the end of the shift. It was Defendants' common practice to require Plaintiff to manipulate his timecard. Defendant also required Plaintiff and Aggrieved Employees to participate in weekly meetings; however, they were instructed not to put those hours on their timecards. This resulted in unpaid hours of work and unpaid overtime.

Further, Defendant notified Plaintiff that there were "no lunches or breaks" on this job. Defendants failed to provide meal periods to Plaintiff and Aggrieved Employees in compliance with California law. Specifically, due to staffing and workflow issues Plaintiff and Aggrieved Employees missed their lunch break because they were not permitted to leave the premises from the start until the end of their shift, and they were on-call from their start time until the end of the shift. Despite this, Defendant instructed Plaintiff to clock out for a thirty-minute meal period every work day, but he was not allowed to actually take a thirty minute meal break. Further, when Plaintiff worked more than 10 hours a day, often he did not receive any meal breaks (two breaks are not waivable).

Like meal periods, Defendant failed to provide rest breaks to Plaintiff and Aggrieved Employees in compliance with California law. Defendant would not provide Plaintiff and Aggrieved Employees with a break of at least ten (10) minutes for each work period that they worked more than four (4) hours or a major fraction thereof. In fact, pursuant to Defendant's policy, Plaintiff and Aggrieved Employees were not allowed to leave the premises or to be unavailable from the beginning of their shift until the end of the shift. Plaintiff worked alone all shift.

Finally, Defendant failed to reimburse Plaintiff and Aggrieved Employees for expenses incurred on behalf of Defendant. Plaintiff would be required at times to use his personal cell phone to receive and provide assignment updates, take photographs of equipment and to document his time worked in an online ADP application. Plaintiff and Aggrieved Employees used their personal cell phones multiple times per day for job duty performance. Plaintiff was not reimbursed for the use of his personal cell phone for these purposes.

As a result of Defendant's failure to pay Plaintiff and Aggrieved Employees all meal and rest period premiums owed, the wage statements Defendant issued were defective. Specifically, Defendant did not accurately list total hours worked, wages due, and total missed meal and rest period premiums earned, and the corresponding rates of pay.



As a further result of Defendant's failure to pay Plaintiff and Aggrieved Employees for all regular and overtime hours worked and failure to pay meal and rest period premiums, Defendant failed to provide all final wages owed to Plaintiff and Aggrieved Employees within twenty-four (24) hours of their termination or seventy-two (72) hours of their resignation. In addition, Plaintiff provided notice of resignation of employment to Defendant on September 11, 2021. Defendant failed to provide Plaintiff with his final paycheck within seventy-two (72) hours of their separation despite various requests from Plaintiff.

B. ALLEGATIONS AND CHARGES

Count 1 - Violation of Labor Code §§ 226.7, 512 and Wage Order No. Wage Order 4, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)

Labor Code section 226.7 and Wage Order No. Wage Order 4, section 11(A) require employers to provide employees meal periods of thirty (30) minutes per five (5) hours worked, which is to be taken before the completion of the fifth hour. Labor Code section 512 and Wage Order No. Wage Order 4, section 11(B) further provide that employers may not employ employees for a work period of more than ten (10) hours per day without providing the employee with a second meal period of thirty (30) minutes; however, if the total hours worked is no more than twelve (12) hours, the second meal period may be waived so long as there was no waiver as to the first meal period. For the reasons stated above, Plaintiff and Aggrieved Employees were not authorized and permitted to take legally compliant meal periods pursuant to California law. Defendant also failed to pay any meal period premiums for their failure to provide meal periods. This was in violation of the law.

Defendant, for a period of time, required Plaintiff and Aggrieved Employees to clock in and out for meal breaks while they were not permitted to take a full thirty minute duty free meal break. When Plaintiff and Aggrieved Employees worked more than ten (10) consecutive hours, they were also not allowed to take a second meal period. Therefore, the presumption is that Plaintiff and Aggrieved Employees did not receive legally compliant meal breaks.

Count 2 – Violation of Labor Code § 226.7 and Wage Order No. Wage Order 4, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)

Labor Code section 226.7 and Wage Order No. Wage Order 4, section 12(A) require employers to provide employees paid off-duty rest periods of ten (10) minutes per four (4) hours or major fraction thereof worked. For the reasons stated above, Plaintiff and Aggrieved Employees were not authorized and permitted to take legally compliant rest periods pursuant to California law. Defendant also failed to pay any rest period premiums for their failure to provide rest periods. This was in violation of the law.



Count 3 – Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)

Labor Code section 226 requires employers to furnish to employees with “an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, . . . (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer . . . and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee . . .” For the reasons stated above, Defendant failed to comply with these requirements with respect to Plaintiff and Aggrieved Employees. This is in violation of the law.

Count 4 – Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)

Labor Code sections 201-203 require that all wages, including meal and rest period violation premiums and unpaid overtime and Plaintiff’s final paycheck, be paid to employees upon separation and/or termination of employment. Here, for the reasons stated above, Plaintiff and Aggrieved Employees did not receive all final wages due and owing to them at the time of termination or seventy-two (72) hours thereafter as required by Labor Code sections 201-203. This is in violation of the law.

Count 5 – Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)

Labor Code section 2802(a) states that “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.” Defendant failed to pay any reimbursements for the use of cell phones by Plaintiff and Aggrieved Employees. This was in violation of the law.

Count 6 – Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)

Labor Code section 558 states that it is unlawful for any employer, or other person acting on behalf of an employer, to violate or cause to be violated any of sections 500 to 558.1 of the Labor Code or any order of the Industrial Welfare Commission. Similarly, Labor Code section 558.1 states that it is unlawful for any employer or other person acting on behalf on an employer to violate, or cause to be violated, any provision regulating minimum wages or hours and days of



work in any order of the Industrial Welfare Commission, as well as Sections 203, 226, 226.7, 1193.6, 1194, or 2802 of the Labor Code. As described above, Defendant, by and through Defendant agents, violated Plaintiff and Aggrieved Employees' rights provided for under Labor Code sections 558 and 558.1 as well as the incorporated Wage Orders and incorporated statutes therein. This is against the law.

Count 7 – Violation of Labor Code §§ 226.3, 1174 (Failure to Maintain Accurate Records)

Labor Code section 226.3 provides that any employer who fails to maintain records required by Labor Code section 226(a) or provide records required by 226(a) shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation. Labor Code section 1174(d) provides that employers must keep and maintain accurate payroll records showing the hours worked daily by, and the wages paid to, employees. Defendant failed to maintain the accurate records required by law and, instead, maintained incomplete, inaccurate records regarding Plaintiff and Aggrieved Employees' wage records and hours worked. This was against the law.

Count 8 – Violation of Labor Code §§ 202, 210 (Untimely Payment of Wages)

Labor Code section 202 (a) provides that "If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting." Defendant failed to comply with this provision by not providing Plaintiff and Aggrieved Employees with their final paycheck within 72 hours of their termination/notice to quit. This was in violation of the law.

Count 9— Violation of Labor Code §§ 510, 1194; IWC Wage Order 16, § 3 (Failure to Pay Overtime Wages)

Labor Code sections 510 and 1194 require employers to pay employees 1 ½ times their regular rate of pay for any work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one workweek. Employers must also pay employees 1 ½ times their regular rate of pay for the first eight (8) hours worked on the seventh day of work in any one workweek. Finally, employers must pay employees 2 times their regular rate of pay for all hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh day of work in any one workweek. As stated above, Plaintiff



and Aggrieved Employees worked over eight (8) hours per day and forty (40) hours per week and were not allowed to put two (2) weekly meetings on their time cards resulting in unpaid overtime wages owed. Plaintiff and all Aggrieved Employees are entitled to recover all unpaid overtime wages. Failure to pay such wages is against the law.

If you have any questions or require any further information regarding the facts and theories to support these claims, do not hesitate to contact our office.

Very truly yours,

Shimoda Law Corp.

By: 
Galen T. Shimoda

GTS/jl

cc: Client via e-mail

1 *McGhee v. Salute Incorporated*

2 **PROOF OF SERVICE — CCP §§ 1013a and 2015.5**
3 **and California Rules of Court, Rule 1.21 and Rule 2.150**

4 I, Allyssa Phonglom, declare that:

5 I am a citizen of the United States and am over the age of eighteen years and not a party to
6 the within above-entitled action.

7 On December 17, 2021, I served the following documents on the party below:

- 8 • Private Attorney General Act Letter

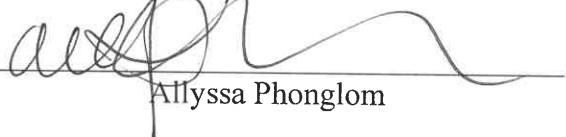
9
10 Salute Incorporated
11 43230 Garfield Road, Suite 160
12 Clinton Township, MI 48028

13 [XXX] [By Certified Mail] I am familiar with my employer's practice for the collection
14 and processing of correspondence for mailing with the United States Postal
15 Service and that each day's mail is deposited with the United States Postal
16 Service that same day in the ordinary course of business. On the date set forth
above, I served the aforementioned document(s) on the parties in said action by
placing a true copy thereof enclosed in a sealed envelope with postage thereon
fully prepaid, for collection and mailing on this date, following ordinary business
practices, at Elk Grove, California, addressed as set forth above.

17 [] [By Personal Service] By personally delivering a true copy thereof to the office
18 of the addressee above.

19 [] [By Overnight Courier] By causing a true copy and/or original thereof to be
personally delivered via the following overnight courier service:_____.

20 I declare under penalty of perjury under the laws of the State of California that the foregoing
21 is true and correct, and that this declaration was executed on December 17, 2021, at Elk Grove,
22 California.

23 
24 Allyssa Phonglom
25
26
27
28



Shimoda & Rodriguez Law
9401 East Stockton Blvd.
Suite #120
Elk Grove, CA 95624
Ph. (916) 525-0716
Fax (916) 760-3733
www.shimodalaw.com

February 9, 2022

For Online Filing:

Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: *McGhee v. Salute Incorporated*

Dear Labor Commissioner,

Our office previously filed a notice with the Labor and Workforce Development Agency on behalf of Khalil McGhee ("Plaintiff") on December 17, 2021. In this letter we seek to amend our prior notice to identify additional provisions of the Labor Code violated by Salute Incorporated. Accordingly, we are providing the following "employers" notice pursuant to California Labor Code section 2699.3:

Salute Incorporated
43230 Garfield Road, Suite 160
Clinton Township, MI 48028

We are setting forth the "facts and theories" to support each of the counts found within this complaint. Please notify us of your intent to investigate any or all of the claims alleged herein against Salute Incorporated ("Defendant"). Should you decide not to investigate, we request that you allow us to bring the following action on behalf of Plaintiff and all Aggrieved Employees, pursuant to Labor Code section 2699(a). Specifically, Aggrieved Employees shall include, but is not limited to the following: Aggrieved Employee: All nonexempt employees who have or continue to work for Defendant in California. Plaintiff is clearly entitled to bring a Private Attorneys General Act ("PAGA") claim for civil penalties on behalf of these individuals pursuant to *Huff v. Securitas Security Services USA, Inc.*, 23 Cal.App.5th 745, 757 (2018) (finding a plaintiff has PAGA standing if affected by one of the alleged violations; the plaintiff need not have personally experienced all the violations pursued in PAGA action).

A. FACTS

Khalil McGhee worked for Defendant from June 9, 2021 to September 11, 2021. Defendant manages and operates facilities throughout the world. Plaintiff worked as Multiskilled Operator in California. His job duties included providing security, monitor control, patrol building and providing electrical technician assistance for the McClellan Park location. Plaintiff typically worked forty (40) hours per week or more, at eight (8) hours per day or more.



Defendant failed to pay Plaintiff and other Aggrieved Employees for all hours worked, including overtime, due to its failure to accurately document Plaintiff's and Aggrieved Employees. Defendant also failed to have Plaintiff accurately clock in and out for meal breaks. Plaintiff often worked alone so he did not have relief to go on breaks, meal or rest breaks, yet Defendant instructed Plaintiff to clock in and out for meal breaks that he was not allowed to take.

At some point, Plaintiff's supervisor, Andrew Calderon, instructed Plaintiff to clock out for lunches, but told him not to take the lunch, but to work through the break, and simply add thirty minutes to the end of the shift. It was Defendants' common practice to require Plaintiff to manipulate his timecard. Defendant also required Plaintiff and Aggrieved Employees to participate in weekly meetings; however, they were instructed not to put those hours on their timecards. This resulted in unpaid hours of work and unpaid overtime.

Further, Defendant notified Plaintiff that there were "no lunches or breaks" on this job. Defendants failed to provide meal periods to Plaintiff and Aggrieved Employees in compliance with California law. Specifically, due to staffing and workflow issues Plaintiff and Aggrieved Employees missed their lunch break because they were not permitted to leave the premises from the start until the end of their shift, and they were on-call from their start time until the end of the shift. Despite this, Defendant instructed Plaintiff to clock out for a thirty-minute meal period every work day, but he was not allowed to actually take a thirty minute meal break. Further, when Plaintiff worked more than 10 hours a day, often he did not receive any meal breaks (two breaks are not waivable).

Like meal periods, Defendant failed to provide rest breaks to Plaintiff and Aggrieved Employees in compliance with California law. Defendant would not provide Plaintiff and Aggrieved Employees with a break of at least ten (10) minutes for each work period that they worked more than four (4) hours or a major fraction thereof. In fact, pursuant to Defendant's policy, Plaintiff and Aggrieved Employees were not allowed to leave the premises or to be unavailable from the beginning of their shift until the end of the shift. Plaintiff worked alone all shift.

Finally, Defendant failed to reimburse Plaintiff and Aggrieved Employees for expenses incurred on behalf of Defendant. Plaintiff would be required at times to use his personal cell phone to receive and provide assignment updates, take photographs of equipment and to document his time worked in an online ADP application. Plaintiff and Aggrieved Employees used their personal cell phones multiple times per day for job duty performance. Plaintiff was not reimbursed for the use of his personal cell phone for these purposes.

As a result of Defendant's failure to pay Plaintiff and Aggrieved Employees all meal and rest period premiums owed, the wage statements Defendant issued were defective. Specifically,



Defendant did not accurately list total hours worked, wages due, and total missed meal and rest period premiums earned, and the corresponding rates of pay.

As a further result of Defendant's failure to pay Plaintiff and Aggrieved Employees for all regular and overtime hours worked and failure to pay meal and rest period premiums, Defendant failed to provide all final wages owed to Plaintiff and Aggrieved Employees within twenty-four (24) hours of their termination or seventy-two (72) hours of their resignation. In addition, Plaintiff provided notice of resignation of employment to Defendant on September 11, 2021. Defendant failed to provide Plaintiff with his final paycheck within seventy-two (72) hours of their separation despite various requests from Plaintiff.

B. ALLEGATIONS AND CHARGES

Count 1 - Violation of Labor Code §§ 226.7, 512 and Wage Order No. Wage Order 4, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)

Labor Code section 226.7 and Wage Order No. Wage Order 4, section 11(A) require employers to provide employees meal periods of thirty (30) minutes per five (5) hours worked, which is to be taken before the completion of the fifth hour. Labor Code section 512 and Wage Order No. Wage Order 4, section 11(B) further provide that employers may not employ employees for a work period of more than ten (10) hours per day without providing the employee with a second meal period of thirty (30) minutes; however, if the total hours worked is no more than twelve (12) hours, the second meal period may be waived so long as there was no waiver as to the first meal period. For the reasons stated above, Plaintiff and Aggrieved Employees were not authorized and permitted to take legally compliant meal periods pursuant to California law. Defendant also failed to pay any meal period premiums for their failure to provide meal periods. This was in violation of the law.

Defendant, for a period of time, required Plaintiff and Aggrieved Employees to clock in and out for meal breaks while they were not permitted to take a full thirty minute duty free meal break. When Plaintiff and Aggrieved Employees worked more than ten (10) consecutive hours, they were also not allowed to take a second meal period. Therefore, the presumption is that Plaintiff and Aggrieved Employees did not receive legally compliant meal breaks.

Count 2 – Violation of Labor Code § 226.7 and Wage Order No. Wage Order 4, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)

Labor Code section 226.7 and Wage Order No. Wage Order 4, section 12(A) require employers to provide employees paid off-duty rest periods of ten (10) minutes per four (4) hours or major fraction thereof worked. For the reasons stated above, Plaintiff and Aggrieved Employees were not authorized and permitted to take legally compliant rest periods pursuant to



California law. Defendant also failed to pay any rest period premiums for their failure to provide rest periods. This was in violation of the law.

Count 3 – Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)

Labor Code section 226 requires employers to furnish to employees with “an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, . . . (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer . . . and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee . . .” For the reasons stated above, Defendant failed to comply with these requirements with respect to Plaintiff and Aggrieved Employees. This is in violation of the law.

Count 4 – Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)

Labor Code sections 201-203 require that all wages, including meal and rest period violation premiums and unpaid overtime and Plaintiff’s final paycheck, be paid to employees upon separation and/or termination of employment. Here, for the reasons stated above, Plaintiff and Aggrieved Employees did not receive all final wages due and owing to them at the time of termination or seventy-two (72) hours thereafter as required by Labor Code sections 201-203. This is in violation of the law.

Count 5 – Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)

Labor Code section 2802(a) states that “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.” Defendant failed to pay any reimbursements for the use of cell phones by Plaintiff and Aggrieved Employees. This was in violation of the law.

Count 6 – Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)

Labor Code section 558 states that it is unlawful for any employer, or other person acting on behalf of an employer, to violate or cause to be violated any of sections 500 to 558.1 of the



Labor Code or any order of the Industrial Welfare Commission. Similarly, Labor Code section 558.1 states that it is unlawful for any employer or other person acting on behalf of an employer to violate, or cause to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, as well as Sections 203, 226, 226.7, 1193.6, 1194, or 2802 of the Labor Code. As described above, Defendant, by and through Defendant agents, violated Plaintiff and Aggrieved Employees' rights provided for under Labor Code sections 558 and 558.1 as well as the incorporated Wage Orders and incorporated statutes therein. This is against the law.

Count 7 – Violation of Labor Code §§ 226.3, 1174 (Failure to Maintain Accurate Records)

Labor Code section 226.3 provides that any employer who fails to maintain records required by Labor Code section 226(a) or provide records required by 226(a) shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation. Labor Code section 1174(d) provides that employers must keep and maintain accurate payroll records showing the hours worked daily by, and the wages paid to, employees. Defendant failed to maintain the accurate records required by law and, instead, maintained incomplete, inaccurate records regarding Plaintiff and Aggrieved Employees' wage records and hours worked. This was against the law.

Count 8 – Violation of Labor Code §§ 202, 210 (Untimely Payment of Wages)

Labor Code section 202 (a) provides that "If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting." Defendant failed to comply with this provision by not providing Plaintiff and Aggrieved Employees with their final paycheck within 72 hours of their termination/notice to quit. This was in violation of the law.

Count 9— Violation of Labor Code §§ 510, 1194; IWC Wage Order 16, § 3 (Failure to Pay Overtime Wages)

Labor Code sections 510 and 1194 require employers to pay employees 1 ½ times their regular rate of pay for any work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one workweek. Employers must also pay employees 1 ½ times their regular rate of pay for the first eight (8) hours worked on the seventh day of work in any



one workweek. Finally, employers must pay employees 2 times their regular rate of pay for all hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh day of work in any one workweek. As stated above, Plaintiff and Aggrieved Employees worked over eight (8) hours per day and forty (40) hours per week and were not allowed to put two (2) weekly meetings on their time cards resulting in unpaid overtime wages owed. Plaintiff and all Aggrieved Employees are entitled to recover all unpaid overtime wages. Failure to pay such wages is against the law.

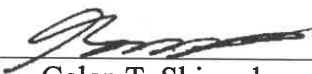
Count 10 – Violation of Labor Code § 1194, 1197.1; IWC Wage Order No. 16, § 4

During the period Plaintiff and Aggrieved Employees were employed by Defendant they were entitled to be paid at least the State's minimum wage rate for each hour that they worked. *See, e.g.*, IWC Wage Order MW-2019; IWC Wage Order No. 16, § (4); Cal. Lab. Code §§ 1194, 1197.1. For the reasons stated above, Defendant did not pay Plaintiff and Aggrieved Employees for all hours worked. Thus, Plaintiff and Aggrieved Employees were not paid at least the applicable state minimum wage for those hours worked. This is against the law.

If you have any questions or require any further information regarding the facts and theories to support these claims, do not hesitate to contact our office.

Very truly yours,

Shimoda & Rodriguez Law, PC

By: 
Galen T. Shimoda

GTS/jl
cc: Client via e-mail

2 **PROOF OF SERVICE — CCP §§ 1013a and 2015.5**
3 **and California Rules of Court, Rule 1.21 and Rule 2.150**

4 I, Erika F. Collazo, declare that:

5 I am a citizen of the United States and am over the age of eighteen years and not a party to
6 the within above-entitled action.

7 On February 9, 2022, I served the following documents on the party below:

- 8 • Amended Private Attorney General Act Letter

9
10 Salute Incorporated
11 43230 Garfield Road, Suite 160
12 Clinton Township, MI 48028

13 [XXX] [By Certified Mail] I am familiar with my employer's practice for the collection
14 and processing of correspondence for mailing with the United States Postal
15 Service and that each day's mail is deposited with the United States Postal
16 Service that same day in the ordinary course of business. On the date set forth
above, I served the aforementioned document(s) on the parties in said action by
placing a true copy thereof enclosed in a sealed envelope with postage thereon
fully prepaid, for collection and mailing on this date, following ordinary business
practices, at Elk Grove, California, addressed as set forth above.

17 [] [By Personal Service] By personally delivering a true copy thereof to the office
18 of the addressee above.

19 [] [By Overnight Courier] By causing a true copy and/or original thereof to be
personally delivered via the following overnight courier service:_____.

20 I declare under penalty of perjury under the laws of the State of California that the foregoing
21 is true and correct, and that this declaration was executed on February 9, 2022, at Elk Grove,
22 California.

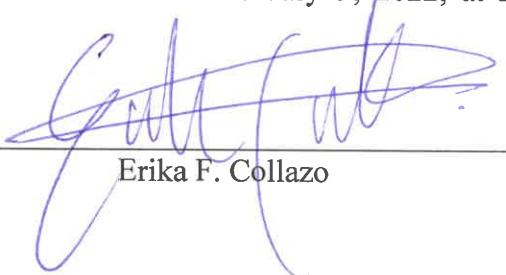
23
24 
25 Erika F. Collazo
26
27
28

EXHIBIT D

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Case Name: McGhee v. Salute Class/PAGA

Thursday, June 1, 2023

Requesting Attorneys Name:

Brittany Berzin

E-Mail:

bberzin@shimodalaw.com

ILYM Contact:

Lisa Mullins

E-Mail:

lisa@ilymgroup.com

Contact Number:

714-878-8836

Assumptions: PAGA Settlement

ASSUMPTIONS	
Total Number of Aggrieved Employees	77
Toll-Free Telephone Support	Yes
Certified Spanish Translation	No
Case Duration (Years)	1

Activity	Rate Type	Unit Cost	Volume	Amount
CASE STARTUP				
Initial Setup - <i>Import and Formatting of Data*</i>	Hourly	\$150.00	3	\$450.00
Project Manager (Case notification and maintenance)	Hourly	\$120.00	3	\$360.00
NCOA	Flat Rate	\$25.00	1	\$25.00
				<i>*ILYM assumes that data will be in a standard format. Client will be notified immediately if not in standard format to correct data or ILYM can convert to standard format @ \$150.00 per hour.</i>
Subtotal				\$835.00

PROJECT MANAGEMENT				
Project Manager (Case notification and maintenance)	Hourly	\$120.00	3	\$360.00
Staff Hours for Processing Forms	Hourly	\$70.00	1	\$70.00
Report Processing	Hourly	\$70.00	1	\$70.00
NCOA	Flat Fee	\$500.00	1	\$500.00
Certified Spanish Translation	Flat Fee	\$0.00	0	\$0.00
Toll-Free Customer Support	Flat Fee	\$100.00	1	\$100.00
Static Website, Includes Hosting	Flat Rate	\$500.00	1	Waived
Subtotal				\$1,100.00

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Activity	Rate Type	Unit Cost	Volume	Amount
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NOTIFICATION/MAILING				
Fulfillment of Notices, English	Per Piece	\$1.00	77	\$77.00
USPS First Class 1oz Postage	Per Piece	\$0.63	77	\$48.51
Remails (Forward/Skip Trace Undeliverables)	Per Piece	\$2.00	15	\$30.80
Storage, Photocopies, Deliveries	Flat Fee	\$331.44	1	\$331.44

Subtotal \$487.75

DISTRIBUTION (Includes EIN, Bank Acct /QSF Setup)*				
Distribution Setup & Management	Hourly	\$150.00	3	\$450.00
Account Reconciliation & Distribution Reporting	Hourly	\$125.00	3	\$375.00
Fulfillment of Notice & Check - (including 1099)	Per Check	\$2.00	77	\$154.00
USPS First Class 1oz Postage	Per Piece	\$0.63	77	\$48.51
Remails (Forward/Skip Trace Undeliverables)	Per Piece	\$2.00	8	\$15.40
Preparation of Taxes	Hourly	\$125.00	8	\$1,000.00
Annual Filing of Tax Return	Per Year	\$1,250.00	1	\$1,250.00

*Additional Bank fees may apply

Subtotal \$3,292.91

CASE CONCLUSION				
Data Manager Final Reporting	Hourly	\$100.00	2	\$200.00
Declaration	Hourly	\$125.00	2	\$250.00

Subtotal \$450.00

Estimated Fee: \$6,165.66

Toatal Will Not Exceed: \$5,100.00

Terms and Conditions

All services to be provided by ILYM Group, Inc. (hereinafter, "ILYM") to Client shall be subject to the following terms and conditions:

Services: Subject to the terms hereof, ILYM agrees to provide the Client with Administration Services (hereinafter, "services") as specified in the Proposal provided to Client to which these Terms and Conditions are attached. The estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make provision for any services or class members/size not delineated in the request for proposal or stipulations. Such services do not in any way constitute legal services or advice. ILYM is performing its services as an Independent Contractor and neither it nor its employees shall be deemed to be employees of the Client.

Mailing and Data Conversion: ILYM's database administration assumes the Client will provide complete data that includes all information required to send notifications and complete the administration process. Data must be provided in a complete, consistent, standardized electronic format. ILYM's standard format is Microsoft Excel, however, ILYM may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by ILYM on a time and materials basis, according to ILYM's Standard Rates.

Charges for Services: Charges to the Client for services shall be on a time and materials basis at our prevailing rates, as the same may change from time to time. Any fee estimates set forth in the proposal are estimates only, based on information provided by Client to ILYM. Actual fees charged by ILYM to Client may be greater or less than such estimate, and Client shall be responsible for the payment of all such charges and expenses in accordance with Section 5 hereof. Charges incurred related to resolving post distribution withholdings and related corrective files due to voids and re-issues of payments and related correspondence with state and federal taxing authorities will not be charged to the Client to the extent that funds are received from the taxing authorities offset these charges. ILYM may derive financial benefits from financial institutions in connection with the deposit and investment of settlement funds with such institutions, including without limitation, discounts on eligible banking services and fees, and loans at favorable rates.

Indemnification: Client will indemnify and hold ILYM (and the officers, employees, affiliates and agents harmless against any Losses incurred by ILYM, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by ILYM in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by ILYM pursuant to Client's instructions.

Payment of Charges: ILYM reserves the right to request payment of postage charges and 50% of the final administration charges at the start of the case. ILYM bills are due upon receipt unless otherwise negotiated and agreed to with the Client. In the event settlement terms provide that ILYM is to be paid out of the Settlement Fund, ILYM will request that Counsel endeavor to make alternate payment arrangements for ILYM charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the Settlement Account is funded by, or no later than the time of disbursement. Decisions of the court and actions of the parties, including disapproval or withdrawal of a settlement, do not affect the Client's liability to ILYM for payment of services. Services are not provided on a contingency fee basis.

Confidentiality: ILYM maintain reasonable and appropriate security measures and safeguards to protect the security and confidentiality of Client data provided to ILYM by Client in connection herewith. Should ILYM ever be notified of any judicial order or other proceedings in which a third party seeks to obtain access to the confidential data created by or for the Client, ILYM will promptly notify the Client, unless prohibited by applicable law. The Client shall have the option to (1) provide legal representation at the Client's expense to avoid such access or (2) promptly reimburse ILYM for any of its costs, including attorneys' fees, reasonably

incurred in avoiding, attempting to avoid or providing such access and not paid by the entity seeking the data. If ILYM is required, pursuant to a court order, to produce documents, disclose data, or otherwise act in contravention of the obligations imposed by this Agreement, or otherwise, with respect to maintaining the confidentiality, proprietary nature and secrecy of the produced documents or disclosed data, ILYM will not be liable for breach of said obligation.

Data Rights:ILYM does not convey nor does the Client obtain any right in the programs, system data, or materials utilized or provided by ILYM in the ordinary course of business in the performance of this Agreement.

Document Retention:Unless directed otherwise in writing by Client, ILYM will destroy undeliverable mail on the effective date of the settlement or the date that the disposition of the case is no longer subject to appeal or review, whichever is later. ILYM will maintain claim forms and other correspondence for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later.

Limitation of damages:ILYM is not responsible to the Client for any special, consequential or incidental damages incurred by Client. Any liability of ILYM to the Client shall not exceed the total amount billed to the Client for the particular services that give rise to any loss.

Termination:The services to be provided under this Agreement may be terminated, at will by the Client upon at least 30 calendar days' prior written notice to ILYM. The Client's obligation to pay for services or projects in progress at the time of notice of withdrawal shall continue throughout that 30 day period. ILYM may terminate this Agreement (i) with 10 calendar days' prior written notice, if the Client is not current in payment of charges or (ii) in any event, upon at least 3 months' prior written notice to the Client.

Notice:Any notice required or permitted hereunder shall be in writing and shall be delivered personally, or sent by registered mail, postage prepaid, or overnight courier service to the responsible officer or principal of ILYM or the Client, as applicable, and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service.

Force Majeure:To the extent performance by ILYM of any of its obligations hereunder is substantially prevented by reason of any act of God or by reason of any other matter beyond ILYM's reasonable control, then such performance shall be excused and this Agreement, at ILYM's option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.

Waiver of Rights:No failure or delay on the part of a party in exercising any right hereunder will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right will be effective unless given in a signed writing.

Jurisdiction:The parties hereto submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby waive any objection to the laying of venue of any such suit, action or proceeding in the Court.

Entire Agreement:These terms and conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.

EXHIBIT E

Shimoda & Rodriguez Law, PC Costs - McGhee v. Salute Incorporated

<u>Date</u>	<u>Description</u>	<u>Amount</u>
12/21/21	Payment to LWDA - PAGA Filing Fee	\$75.00
12/21/21	Certified Mail - Amended PAGA Letter to Salute Incorporated	\$4.48
1/1/22	Administration/Copy Fee - Class Action - Phone, Fax, Scan, Copying, Westlaw Legal Research Fees	\$500.00
2/9/22	Payment to Court - Complaint	\$435.00
2/9/22	Service Fee to Court - Complaint	\$40.00
2/18/22	Priority Mail - Notice & Acknowledgement to OC	\$7.75
3/2/22	Service Fee to Court - Amended Civil Case Cover Sheet	\$40.00
3/3/22	Service Fee to Court - Notice of Depositing Complex Fees	\$40.00
3/3/22	Payment to Court - Complex Fees	\$1,000.00
5/17/22	One Legal Fee - First Amended Complaint	\$78.76
9/15/22	One Legal Fee - Joint Case Management Conference Statement + Jury Fees	\$215.68
4/28/23	One Legal Fee - Joint Case Management Conference Statement	\$61.26
Anticipated	One Legal Fee - Preliminary Approval Motion	\$300.00
Anticipated	Payment to Court - Preliminary Approval Motion	\$60.00
Anticipated	Personal Service to OC - Preliminary Approval Motion	\$80.00
Anticipated	One Legal Fee - Final Approval Motion	\$300.00
Anticipated	Payment to Court - Final Approval Motion	\$60.00
Anticipated	One Legal Fee - Compliance Declarations	\$70.00
TOTAL:		<u>\$3,367.93</u>

EXHIBIT F

CALIFORNIA SUPERIOR COURT
FOR THE COUNTY OF SACRAMENTO

KHALIL MCGHEE individually and on behalf
of all other similarly situated employees,

Plaintiff,

vs.

SALUTE INCORPORATED, a California
Corporation; and DOES 1 to 100, inclusive,

Defendants.

Case No. 34-2022-00315317

**NOTICE OF PROPOSED CLASS ACTION
AND PAGA SETTLEMENT, AND HEARING
DATE FOR FINAL COURT APPROVAL OF
SETTLEMENT**

ATTENTION: any and all non-exempt employees who have worked, or continue to work, for Defendant in California from February 10, 2018 up to [REDACTED] (the "Class Members").

PLEASE READ THIS NOTICE CAREFULLY. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF CLASS ACTION LITIGATION AND POTENTIAL DISBURSEMENT OF SETTLEMENT FUNDS TO YOU. IF YOU ARE A CLASS MEMBER, IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHT TO PARTICIPATE IN OR OPT OUT OF THE SETTLEMENT ACCORDING TO THE PROCEDURES DESCRIBED BELOW.

You are receiving this notice pursuant to an order from the Sacramento County Superior Court ("Court") granting Plaintiff's motion for preliminary approval of a Class Action and PAGA Settlement and Release ("Agreement" or "Settlement") as fair, reasonable, and adequate. The Settlement was entered into between Khalil McGhee (hereinafter referred to as "Plaintiff" or Class Representative), and Salute Mission Critical LLC (formerly Salute Incorporated and hereinafter referred to as "Defendant") on behalf of Class Members as defined above. The terms of the Settlement are outlined herein. You are receiving this notice because Defendant's records indicate you fall within the definition of "Class Member." Defendant's records also indicate that you worked [REDACTED] pay periods during the applicable Class Period (as defined below), which means your total share of the settlement proceeds is estimated to be [REDACTED]. Your actual share of the settlement proceeds will vary depending on the total number of Class Members that choose to participate and the resolution of any pay period disputes as described in this notice.

The terms of the Agreement and a description of the case are identified in this notice. Pursuant to the Court's order, YOU ARE HEREBY NOTIFIED AS FOLLOWS:

I. BACKGROUND OF THE CASE

On February 10, 2022, Plaintiff filed a Complaint against Salute Incorporated in the Sacramento County Superior Court of California on behalf of himself and Class Members. The term "Action" means this putative class action pending in Sacramento County Superior Court, Case No. 34-2022-00315317. The Class Period is February 10, 2018 up to [REDACTED] (the "Class Period").

In the Action, Plaintiff sought to obtain unpaid wages, interest, statutory penalties, civil penalties, fees, and costs on behalf of himself, Class Members, and Aggrieved Employees. Plaintiff alleged that Defendant violated California law by 1) failing to compensate Class Members for time spent during required weekly meetings and time spent outside of their scheduled shifts waiting for relief (*i.e.*, the next employee to arrive at the work location); 2) failing to provide Class Members with duty-free meal and rest periods; and 3) failing to reimburse Class Members for the use of their personal cellphones for work. Defendant has denied all of Plaintiff's allegations. The Action has been actively litigated. There have been on-going investigations, and there has been an exchange of extensive documentation and information. Based upon the negotiations, and all known facts and circumstances, including the various risks and uncertainties related to legal actions, the Parties reached a class-wide settlement. By settling, the Parties will avoid the risks associated with a lengthy litigation process. Despite agreeing to and supporting the Agreement, Defendant continues to deny all allegations and claims. Defendant has entered into this Settlement to fully, finally, and forever resolve this Action, based on the terms set forth in the Agreement, in order to avoid the burden and expense associated with ongoing litigation.

The Agreement applies to any and all Class Members, which are defined as any and all non-exempt employees who have worked, or continue to work, for Defendant in California from February 10, 2018 up to [REDACTED]. The Agreement also applies to Aggrieved Employees, which are defined as all non-exempt employees who have or continue to work for Defendant in California from December 17, 2020 up to [REDACTED]. If you are a Class Member, you have the opportunity to participate in the Settlement, or to exclude yourself (“opt out”) from the Settlement. This notice is to advise Class Members of how they can either participate in the Settlement or be excluded from the Settlement. As set forth below, Aggrieved Employees cannot opt out of this Agreement as it relates to the PAGA Payment or Released PAGA Claims regardless of whether they opt out of being a Class Member. Aggrieved Employees will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

II. SUMMARY OF THE PROPOSED SETTLEMENT

A. The Amount of the Settlement

Under the terms of the Agreement, Defendant has agreed to pay a total sum of One Hundred Twenty-Five Thousand Dollars and Zero Cents (\$125,000.00) (“Gross Settlement Amount”). Deducted from this Gross Settlement Amount will be sums approved by the Court for attorneys’ fees not to exceed 35% of the Gross Settlement Amount, attorneys’ costs not to exceed \$6,000.00, Settlement Administrator Costs estimated not to exceed \$10,000.00, Class Representative’s Enhancement Payment of \$10,000.00, and \$10,000.00 for alleged PAGA penalties (the “PAGA Payment”), which will result in a “Net Settlement Amount” for distribution to all Class Members. Any employer side taxes attributable to payments allocated as wages will be paid by Defendant in addition to the Gross Settlement Amount. As explained further below, the amount of each Class Member’s share of the Net Settlement Amount will depend on the number of pay periods worked by participating Class Members during the Class Period. Of the \$10,000.00 allocated to resolving the PAGA claims, 75% of the PAGA Payment will be paid to the State of California Labor and Workforce Development Agency and 25% of the PAGA Payment will be divided among Aggrieved Employees.

The number of pay periods you worked during the Class Period and your estimated total share of the Net Settlement Amount and PAGA Payment (“Individual Settlement Amount”) is stated on the first page of this notice. The actual amount received may be more or less than the amount stated depending on the actual number of pay periods worked by Participating Class Members (*i.e.*, those who do not opt out of the Settlement), the resolution of any disputes regarding pay periods, and on the distributions finally approved and allocated by the Court. However, whether Class Members opt out will have no effect on Aggrieved Employees’ allocations for the PAGA claims.

B. Individual Settlement Amounts and Allocation Between Class Members and Aggrieved Employees

Defendant will pay Individual Settlement Amounts through the Settlement Administrator, as described below, to each Participating Class Member and to Aggrieved Employees. All Individual Settlement Amounts will be subject to appropriate taxation. The Parties have agreed, based on the allegations in the Action that all Individual Settlement Amounts payable to eligible Class Members will be allocated from the Net Settlement Amount and paid as 80% for disputed interest, statutory penalties, and other non-wage damages for which IRS Forms 1099-MISC and 1099-INT will issue and 20% for disputed wages for which IRS Forms W-2 will issue. The PAGA Payment to Aggrieved employees will be paid as 100% for civil penalties.

Payment to Participating Class Members and Aggrieved Employees will not require the submission of a claim form. Each Participating Class Member’s share will be determined by dividing their total pay periods worked within the Class Period by the total pay periods worked by all Participating Class Members within the Class Period. That fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member’s individual share of the Net Settlement Amount. Each Aggrieved Employee’s share of the 25% portion of the PAGA Payment will be determined by dividing their total pay periods worked within the PAGA Claim Period by the total pay periods worked by all Aggrieved Employees within the PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the Aggrieved Employee’s individual share. The PAGA Claim Period is defined as December 17, 2020 to [REDACTED]. Defendant’s records indicate that you worked [REDACTED] pay periods during the applicable PAGA Claim Period, which means your share of the PAGA Payment is estimated to be [REDACTED]. This amount is included in your estimated Individual Settlement Amount stated on the first page of this notice, not in addition to it. You will still receive your share of the PAGA Payment even if you opt out of being a Class Member. Receipt of the Individual Settlement Amounts will not entitle any Class Member or Aggrieved Employee to additional compensation or benefits under any compensation, retirement or benefit plan or agreement in place during the period covered by the Settlement.

C. Calculations to Be Based on Defendant's Records and Resolution of Pay Period Disputes

For each Class Member, the amount payable will be calculated by the Settlement Administrator from Defendant's records. Defendant's records will be presumed correct unless evidence to the contrary is provided to the Settlement Administrator. Defendant's records and any additional evidence will be reviewed by the Settlement Administrator in the event of a dispute about the number of pay periods worked by an individual Class Member. If a Class Member disputes the accuracy of Defendant's records, all supporting documents evidencing additional pay periods must be submitted by the Class Member. The dispute must (a) identify the nature of the dispute; (b) provide any information or documentation supporting the dispute; (c) be signed; and (d) be post-marked no later than [REDACTED]. The dispute will be resolved by the Settlement Administrator based on the records and evidence provided.

D. Release of Claims

For those Class Members who do not opt out and Aggrieved Employees, the Agreement contains the following releases:

Class members who do not opt out will be deemed to have released any and all class claims that are alleged in the Complaint and LWDA letters, and any additional wage and hour claims that could have been brought based on the facts alleged in the Complaint and LWDA letters, through the Class Period, including claims for failure to pay overtime wages, failure to pay minimum wages, meal period violations, rest period violations, wage statement violations, waiting time penalties, failure to reimburse expenses, and unfair competition claims based on the foregoing, including without limitation any claims asserted in the Complaint and LWDA letters, and any additional wage and hour claims that could have been brought based on the facts alleged in the Complaint and LWDA letters under California Labor Code §§ 201-204, 210, 226, 226.3, 226.7, 510, 512, 1194, 1197.1, 2802, the applicable Wage Orders of the Industrial and Welfare Commission (the "IWC"), and California Business and Professions Code § 17200, *et seq.*, and includes all types of relief available based on the above-referenced released claims, including any claims for damages, restitution, losses, penalties, fines, liens, attorneys' fees and costs under Code of Civil Procedure § 1021.5 or otherwise, expenses, debts, interest, injunctive relief, declaratory relief, liquidated damages, or any other related relief of any nature. This release excludes the release of claims not permitted by law. This release excludes claims for workers' compensation or unemployment insurance benefits. This release will cover all Class Members who do not opt out.

Aggrieved Employees will be deemed to have released any and all claims that were brought under the Private Attorneys General Act, Labor Code §§ 2698 *et seq.*, contained in the Complaint and LWDA letters and any additional wage and hour PAGA claims that could have been brought based on the facts alleged in the Complaint and LWDA letters during the PAGA Claim Period, including penalties based on alleged failure to pay overtime wages, failure to pay minimum wages, meal period violations, rest period violations, wage statement violations, waiting time penalties, failure to reimburse expenses, including without limitation any claims for PAGA penalties asserted in the Complaint and LWDA letters, and any additional wage and hour PAGA claims that could have been brought based on the facts alleged in the Complaint and LWDA letters under California Labor Code §§ 201-204, 210, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1194, 1197.1, 2802, and the applicable Wage Orders of the Industrial and Welfare Commission the IWC. Aggrieved Employees cannot opt out of this waiver of claims.

The individuals released ("Released Parties") include Defendant, Defendant's present and former parent companies, subsidiaries, and related or affiliated companies, as well as Defendant's officers, shareholders, directors, agents, employees, attorneys, insurers, successors and assigns, and any individual or entity that could be liable for any of the claims raised in the Complaint.

Class Members and/or Aggrieved Employees should direct questions about this notice, the above release, or the settlement to the Settlement Administrator appointed by the Court (phone number at the bottom of each page of this notice) or Class Counsel.

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER

A. Participating in the Settlement as a Class Member

If you wish to be a Participating Class Member and believe your pay period information is accurate, **you do not need to take any further action**. Payment will be automatically made to you consistent with the terms of the Agreement and Court Order. If you wish to dispute the pay period calculation, you may follow the procedures outlined in Section II.C above. California law protects Class Members from retaliation based on their decision to participate in the Settlement.

B. Excluding Yourself from the Settlement as a Class Member

The Court will exclude you from the being a Class Member if you request this by [REDACTED]. If you do not wish to be bound by the Settlement as a Class Member, you may request to be excluded (*i.e.*, “opt out”) by submitting a timely written request to the Settlement Administrator. The request to opt-out must (a) state your full name and date of birth; (b) a statement that you do not want to be a Class Member, do not want to participate in the Settlement, and/or want to be excluded from this Settlement; (c) identify the case name and number (*i.e.* *McGhee v. Salute Incorporated*, Case No. 34-2022-00315317); (d) be signed; and (e) be post-marked no later than [REDACTED]. The request to opt out must be mailed by First Class U.S. Mail, or the equivalent, to:

[admin info]

If you submit a request to opt out which is not postmarked by [REDACTED], your request to opt out will be rejected, and you will be bound by the release and all other terms of the Agreement. Do not use a postage meter as that may not result in a postmark appearing on the envelope containing your request to opt out. Any Class Member who submits a complete and timely request to opt out shall, upon receipt by the Settlement Administrator, no longer be a Class Member and not receive their share of the Net Settlement Amount. Aggrieved Employees cannot opt out of this Agreement and will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

C. Objection to Settlement

If you do not opt out of the Settlement, you can object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. You can ask the Court to deny approval by filing an objection. You cannot ask the Court to order a larger settlement; the Court can only grant or deny approval of the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. The objection must (a) state your full name and date of birth; (b) provide evidence that you are, in fact, a Class Member; (c) state the reasons for the objection(s), including supporting documentation; (d) identify the case name and number (*i.e.* *McGhee v. Salute Incorporated*, Case No. 34-2022-00315317) (e) be signed; and (f) be post-marked no later than [REDACTED]. The objection must be sent to the Settlement Administrator at the address identified in Section III.B and to counsel for Plaintiff and Defendant at the addresses identified in Section VI of this notice.

If you have submitted a written objection as outlined above, you may also appear at the final approval hearing to state your objection. Any Class Member who does not request exclusion may, if the Class Member so desires, enter an appearance through an attorney. If you appear through your own attorney, you are responsible for paying that attorney. You should also file a notice of intent to appear with the Court and serve the notice on counsel for Plaintiff and Defendant.

IV. EFFECT OF THE SETTLEMENT: RELEASED RIGHTS AND CLAIMS

If the Court grants final approval of the Settlement, the Court will make and enter judgment consistent therewith. The judgment will bind all Class Members who do not request exclusion. After final approval, each and every Class Member who does not opt out of the Settlement and each and every Aggrieved Employee, will release Defendant and the Released Parties from the Released Class Claims and the Released PAGA Claims, respectively, as described above. In other words, if you were employed as a Class Member by Defendant in California during the Class Period, and you do not exclude yourself from the Settlement, you will be deemed to have entered into these releases and to have released the above-described claims. In addition, you will be barred from ever suing Defendant and the Released Parties with respect to the claims covered by this Settlement. If the Settlement is not approved by the Court or does not become final for some other reason, the litigation will continue.

V. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a hearing in Department 28, 780 9th Street Sacramento, California 95814 on [REDACTED] at 9:00 a.m. to determine whether the Agreement should be finally approved as fair, reasonable and adequate. The Court also will be asked to approve Class Counsel’s request for attorneys’ fees and costs, the Settlement Administrator Costs, and the Class Representative’s Enhancement Payment. The hearing may be continued without further notice. It is not necessary for you to appear at this hearing.

VI. ADDITIONAL INFORMATION

You may access any motions for approval of the Agreement, any motions for approval of attorneys’ fees and costs, and any other

documents as the Court directs through the Court's public case access site: <https://services.saccourt.ca.gov/PublicCaseAccess/>

If you need more information or have any questions, you may contact the Settlement Administrator at the address and telephone number listed below, toll free.

McGhee v. Salute
[NAME]
[STREE ADDRESS]
[CITY, STATE ZIP]
[PHONE NUMBER]

You can also contact Class Counsel as follows:

Galent T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
Shimoda & Rodriguez Law, PC
9401 East Stockton Blvd., Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS. IF YOU HAVE ANY QUESTIONS, CALL [number]

BY ORDER OF THE COURT

EXHIBIT G

Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
Brittany V. Berzin (Cal. State Bar No. 325121)
Shimoda & Rodriguez Law, PC
9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733

Attorneys for Plaintiff KHALIL MCGHEE

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

KHALIL MCGHEE, individually and on
behalf of all other similarly situated
employees,

Plaintiff,

vs.

SALUTE INCORPORATED, a Michigan
Corporation; and DOES 1 to 100, inclusive,

Defendants.

Case No. 34-2022-00315317

CLASS ACTION

**MEMORANDUM OF POINTS &
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Reservation No.: 2721356

Date: July 21, 2023

Time: 9:00 a.m.

Dept.: 28

Judge: Hon. Lauri A. Damrell

Filed: February 10, 2022

FAC Filed: April 25, 2022

Trial Date: None Set

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16 *Nordstrom Com. Cases*, 186 Cal.App.4th 576, 589 (2010)..... 4, 7

17 *North County Contr. 's Assn., Inc. v. Touchstone Ins. Svcs.*, 27 Cal.App.4th 1085 (1994) 8

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18	<i>In re Omnivision Technologies, Inc.</i> , 559 F.Supp.2d 1036 (2007)	10
19	<i>Jack v. Hartford Fire Ins. Co.</i> , 2011 U.S. Dist. LEXIS 118764 (S.D. Cal. 2011)	4
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4	<i>Schiller v. David's Bridal, Inc.</i> , 2012 U.S. Dist. LEXIS 80776 (E.D. Cal. 2012)	10
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11	<i>Wright v. Linkus Enters.</i> , 259 F.R.D. 468 (E.D. Cal. 2009)	6
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1 **I. INTRODUCTION AND OPENING SUMMARY OF ARGUMENT**

2 Plaintiff Khalil McGhee (“Plaintiff”) seeks preliminary approval of a wage and hour class action
3 and Private Attorneys General Act (“PAGA”) settlement in the gross amount of \$125,000. *See*
4 *generally* Exhibit A (Class Action and PAGA Settlement Agreement and Release [“Agreement”]).
5 Plaintiff brought this class action individually and on behalf of similarly situated employees who worked
6 for Defendant Salute Mission Critical LLC (formerly known as Salute Incorporated and hereinafter
7 referred to as “Defendant”) (Plaintiff and Defendant sometimes collectively referred to as the “Parties”).
8 *See generally* Exhibit B (Plaintiff’s Operative Complaint). There are approximately 75 Class Members.

9 Plaintiff has alleged that Defendant failed to pay overtime wages, failed to pay minimum wage,
10 failed to provide meal periods or pay premiums in lieu thereof, failed to provide rest periods or pay
11 premiums in lieu thereof, provide accurate wage statements, failed to pay all final wages, failed to
12 reimburse expenses, and engaged unfair competition. *See generally* Exhibit B; *see also* Declaration of
13 Brittany V. Berzin (“Decl. Berzin”) ¶ 9. Plaintiff has also alleged Defendant is liable for a civil
14 penalties under the PAGA based on these violations. *See id.*; Exhibit C (Plaintiff’s Ltrs. to the Labor
15 and Workforce Development Agency [“LWDA”] Regarding PAGA Claims). Defendant has denied all
16 of Plaintiff’s allegations in their entirety and any liability or wrongdoing of any kind. *See* Decl. Berzin,
17 ¶ 5. Defendant has also denied that this case is appropriate for class certification other than for
18 purposes of settlement. *See id.* However, subject to Court approval, the Parties have been able to
19 compromise and settle all asserted claims as a result of extensive investigations, document and data
20 exchanges, and extended negotiations. *See* Exhibit A. Plaintiff and Plaintiff’s counsel believe the
21 proposed Agreement is fair, reasonable, and adequate based on the investigations, informal discovery,
22 employee data exchanges, negotiations, and a detailed knowledge of the issues in this case. *See* Decl.
23 Berzin ¶¶ 6-7, 9-10.

24 It is well within the discretion of this Court to grant preliminary approval of the Agreement as it
25 satisfied all applicable criteria under California law. Accordingly, Plaintiff requests that the Court: (1)
26 certify the proposed settlement class on a preliminary and conditional basis; (2) grant preliminary and
27 conditional approval of the proposed Agreement (Exhibit A); (3) approve the form and content of the
28 Notice of Settlement (Exhibit F) and the method for providing notice to Class Members as set forth in

the Agreement; and (4) adopt the implementation schedule contained in the proposed order.

II. PROCEDURAL AND LITIGATION HISTORY

Plaintiff filed a class action complaint on approximately February 10, 2022, in Sacramento County Superior Court against Defendant. Plaintiff exhausted administrative remedies under the PAGA by providing notice of the claims and violations to the LWDA on December 17, 2021 and February 9, 2022. *See* Exhibit C; Cal. Lab. Code § 2699.3(a), (c); Decl. Berzin, ¶ 3. Then, Plaintiff filed a First Amended Class Action Complaint on approximately April 25, 2022 to include a PAGA claim. *See id.*; Exhibit B. There is no date set for a motion for certification or trial in this matter. *See* Decl. Berzin, ¶ 4.

III. INVESTIGATION AND DISCOVERY CONDUCTED

Plaintiff thoroughly investigated issues affecting certification, the merits of the class claims, and potential damages for such claims. *See id.* at ¶¶ 3, 6-10; Declaration of Khalil McGhee (“Decl. McGhee”) ¶¶ 3-5. Plaintiff worked during the time all of Defendant’s policies and practices at issue in the Complaint were in effect and provided information regarding these policies and practices, enabling pre-filing investigations to take place. *See id.* The Parties engaged in informal discovery and exchange of documents, including a representative sampling of employee data, such as timecard data and payroll reports, and relevant policies for the entirety of the statute of limitations applicable to the asserted claims. The informal discovery covered all aspects of the asserted claims, including certification issues, merits issues, damages, the scope and configuration of Class Members, the content and implementation of the wage and hour policies at issue, issues relating to manageability concerns at trial, among other relevant areas. *See* Decl. Berzin, ¶ 7. The information allowed Plaintiff to determine the extent and frequency of any violations in accordance with Plaintiff’s contentions and create an accurate damages model to assess the reasonableness of any settlement. *See id.*

IV. NEGOTIATION AND PROPOSED SETTLEMENT

a. Plaintiff and Defendant Engaged in Extensive Arm’s Length Negotiations

The final settlement occurred only after extended, arm’s length negotiations. Over the course of approximately one year and three months, Plaintiff has been investigating the claims and discussing

1 with Defendant's counsel the merits of the claims and issues present in this case. *See id.* at ¶¶ 6-8. The
2 Parties exchanged substantial amounts of information and legal analysis in connection with these
3 discussions. *See id.* It was only after these extended discussions, that the Parties were able resolve all
4 claims and enter into the Agreement. *See id.* at ¶ 8.

5 **b. The Terms of the Agreement**

6 1. The following groups of individuals are covered by the Agreement: (a) Class Members,
7 which includes any and all non-exempt employees who have worked, or continue to work, for
8 Defendant in California from February 10, 2018 up to either: (1) the Preliminary Approval Date, or (2)
9 July 24, 2023, whichever is earlier; and (b) Aggrieved Employees, which includes all non-exempt
10 employees who have or continue to work for Defendant in California from December 17, 2020 up to
11 either (1) the Preliminary Approval Date, or (2) July 24, 2023, whichever is earlier. *See* Exhibit A, ¶¶
12 1.2, 1.6, 1.7, 1.24. There are approximately 50 Class Members and 50 Aggrieved Employees. *See id.*

13 2. Defendant will pay the Gross Settlement Amount of \$125,000, which is exclusive of the
14 employer's share of payroll taxes. *See id.* at ¶ 5.1. No portion of the Gross Settlement Amount will
15 revert to Defendant. *See id.* at ¶ 5.6. Aggrieved Employees will still be paid their share of the PAGA
16 Payment regardless of whether they opt out of being Class Members. *See id.* at ¶¶ 7.5.1, 7.8.3.

17 3. Up to \$10,000 will be paid to Plaintiff as an Enhancement Payment. This amount will
18 be in addition to any amount Plaintiff may be entitled to under the terms of the Agreement. *See id.* at ¶
19 5.4.

20 4. Subject to Court approval, the Parties have selected ILYM Group, Inc. to act as the
21 Settlement Administrator, who has provided a maximum cost estimate of \$5,100. *See* Exhibit D
22 (ILYM Group, Inc. Quote); Exhibit A, ¶ 1.33.

23 5. The Parties agree that \$10,000 of the Gross Settlement Amount shall be allocated to
24 resolving claims under the PAGA. Seventy-Five percent (75%) of the PAGA Payment will be paid to
25 the LWDA and Twenty-Five percent (25%) will be paid to Aggrieved Employees. *See* Exhibit A, ¶
26 5.5. Given the risk to proving the claims on the merits, the derivative nature of the penalties, the efforts
27 by Defendant to maintain compliant policies and take corrective action, the presence of what may likely
28 be deemed good faith disputes, and the Court's discretion to reduce any penalty award, Plaintiff

believes the \$10,000 PAGA Payment allocation represents a meaningful settlement aimed at deterring non-compliance given the facts of this case. *See* Decl. Berzin, ¶¶ 5-10; *see also Nordstrom Com. Cases*, 186 Cal.App.4th 576, 589 (2010) (approving \$0 allocation to the resolution of PAGA claims based on their being disputed and being part of a class settlement which was evaluated based on the terms of the agreement overall); *Junkersfeld v. Med. Staffing Sols., Inc.*, 2022 WL 2318173, at *8 n.2 (E.D. Cal. 2022) (collecting cases with PAGA settlement values ranging from .037%-1%); *Jennings v. Open Door Marketing, LLC*, 2018 WL 4773057, *9 (N.D. Cal. 2018) (approving settlement of PAGA claims at 0.6% of total estimated value due to risk of no recovery); *Ruch v. AM Retail Grp., Inc.*, 2016 WL 5462451, *7 (N.D. Cal. 2016) (approving \$10,00 PAGA settlement allocation where total PAGA penalty exposure was approximately \$5.2 million, or 0.2% of total estimated value); *Davis v. Cox Commc'ns California, LLC*, 2017 U.S. Dist. LEXIS 63514, *1 (S.D. Cal. 2017) (preliminarily approving \$4,000 PAGA allocation in \$275,000 settlement); *Moore v. Fitness Int'l, LLC*, 2014 U.S. Dist. LEXIS 8358, *5 (S.D. Cal. 2014) (approving \$2,500 PAGA allocation when attorneys' fees award alone amounted to \$200,000); *Jack v. Hartford Fire Ins. Co.*, 2011 U.S. Dist. LEXIS 118764, *6 (S.D. Cal. 2011) (approving \$3,000 PAGA allocation in \$1,200,000 settlement); *Singer v. Becton Dickinson & Co.*, 2010 U.S. Dist. LEXIS 53416, *2 (S.D. Cal. 2010) (approving \$3,000 PAGA allocation in \$1,000,000 settlement); *Hopson v. Hanesbrands Inc.*, 2009 U.S. Dist. LEXIS 33900, *9 (N.D. Cal. 2009) (approving \$1,500 PAGA allocation in \$1,026,000 settlement); *Syed v. M-I, L.L.C.*, 2017 U.S. Dist. LEXIS 24880, *34-35 (E.D. Cal. 2017) (approving \$100,000 PAGA allocation in a \$3,950,000 settlement even though PAGA exposure was calculated at \$53,600,000, or 0.2% of total estimated value); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, at *7 (E.D. Cal. 2012) (approving \$10,000 PAGA allocation in a \$3,700,000 settlement); *Franco v. Ruiz Food Prod., Inc.*, 2012 WL 5941801, at *14 (E.D. Cal. 2012) (\$10,000 in PAGA payment from \$2,500,000 settlement fund); *Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645, at *1 (N.D. Cal. 2011) (approving PAGA settlement payment of \$7,500 to the LWDA out of \$6.9 million common-fund settlement).

6. The Parties agree that up to thirty-five percent (35%) of the Gross Settlement Amount (\$43,750) will be paid for Plaintiff's attorneys' fees incurred in the litigation of this case. Defendant will not oppose any application for attorneys' fees so long as it is within this threshold. *See id.* at ¶ 5.2.

1 Additionally, the Parties agree that Plaintiff will also be entitled to the actual litigation costs as
2 approved by the Court in an amount not to exceed 6,000. *See id.* The proposed notice to be sent to
3 Class Members will state this information. *See* Exhibit F.

4 7. Any allocated amounts under the Agreement for Settlement Administrator Costs, Class
5 Representative Enhancement Payment, and attorney's fees and costs that are not ultimately awarded by
6 the Court will remain part of the Net Settlement Amount and be paid out to Participating Class
7 Members on a pro rata basis as set forth in the Agreement. *See* Exhibit A, ¶¶ 5.1-5.5, 5.8. These
8 amounts will be paid out from the Gross Settlement Amount, not in addition to the Gross Settlement
9 Amount. *See* Exhibit A, ¶¶ 5.1-5.5.

10 8. Class Members who fail to timely opt-out of this settlement will waive all Released
11 Class Claims as set forth in the Agreement. *See* Exhibit A, ¶¶ 1.14, 1.26, 1.30, 1.32, 6.1. Aggrieved
12 Employees will waive all Released PAGA Claims as set forth in the Agreement regardless of whether
13 they opt out of being a Class Member. *See id.* at ¶¶ 1.30-1.32, 6.1-6.2, 7.5.1.

14 9. For any portion of the Net Settlement Amount or PAGA Payment allocated to
15 Participating Class Members and/or Aggrieved Employees that is not claimed by them by cashing their
16 respective settlement checks within 180 calendar days of issuance, that remaining amount shall be
17 donated equally, *i.e.*, 50/50 to Capital Pro Bono, Inc., and the Center for Workers' Rights under the
18 doctrine of *cy pres*. *See* Exhibit A, at ¶ 5.6. Because the Agreement provides for all funds such that
19 there is no residue, the provisions of California Civil Procedure Code section 384 are inapplicable. *See*
20 *In re Microsoft I-V Cases*, 135 Cal.App.4th 706, 718, 720 (2006). The designated beneficiaries clearly
21 promote the law consistent with the objectives and purposes underlying the lawsuit as they are non-
22 profits aimed at assisting employees with wage and hour claims who cannot afford legal representation,
23 including providing representation for employees in wage claims before the California Labor
24 Commissioner. *See id.* at 722-724; *see also* Decl. Berzin, ¶¶ 27-28.

25 **c. Allocation of Settlement Funds**

26 Payment to Participating Class Members and Aggrieved Employees will not require the
27 submission of a claim form. A Net Settlement Amount will be determined by subtracting from the
28 Gross Settlement Amount any attorneys' fees and costs, Enhancement Payment to the Class

Representative, Settlement Administrator Costs, PAGA Payment that are approved and/or awarded by the Court. Each Class Member's share will be determined by dividing their total pay periods worked within the Class Period by the total pay periods worked by all Class Members within the Class Period. That fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member's individual share of the Net Settlement Amount. Each Aggrieved Employee's share of the 25% portion of the PAGA Payment will be determined by dividing their total pay periods worked within the PAGA Claim Period by the total pay periods worked by all Aggrieved Employees within the PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the Aggrieved Employee's individual share. See Exhibit A, at ¶¶ 1.29, 5.5, 5.8.

V. THE PROPOSED PROCEDURES TO NOTIFY CLASS MEMBERS SATISFY DUE PROCESS AS THEY PROVIDE THE BEST NOTICE PRACTICABLE UNDER THE CIRCUMSTANCES

It is not required that Class Members be given actual notice of a class settlement; instead, the best practicable notice under the circumstances is all that is required. See *Silber v. Mabon*, 18 F.3d 1449, 1453 (9th Cir. 1994); *Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1129 (9th Cir. 2017); *Walsh v. CorePower Yoga LLC*, 2017 U.S. Dist. LEXIS 163991, at *12-14 (N.D. Cal. 2017); *Wright v. Linkus Enters.*, 259 F.R.D. 468, 474-75 (E.D. Cal. 2009). In *Silber v. Mabon*, 18 F.3d 1449 (9th Cir. 1994), the Court rejected a class member's argument that he had not received due process because he did not receive notice until after the opt out period, finding that, so long as the notice process utilized is the best practicable under the circumstances, due process is satisfied even if there is no actual receipt of the notice. See *Silber*, 18 F.3d at 1453-1454. A similar finding was made in *Briseno v. Conagra Foods, Inc.*, 844 F.3d 1121 (9th Cir. 2017). With regard to any potential for undeliverable notice mailings, the Court in *Rannis v. Recchia*, 380 F. App'x 646 (9th Cir. 2010) found that class members who did not receive actual notice due to their mailings being deemed undeliverable were still properly held to be part of the class settlement because they received the best notice practicable under the circumstances. See *Rannis v. Recchia*, 380 F. App'x at 650-651. In *Noel v. Thrifty Payless, Inc.*, 7 Cal.5th 955, 980-984 (2019), the California Supreme Court noted that California has adopted a similar approach regarding providing notice to class members.

Under the proposed notice procedures, Class Members will have forty-five (45) days from the

1 date of mailing to review and respond to the Notice of Settlement, which will also be available online.
2 See Exhibit A, ¶¶ 1.21, 8.1. The Notice of Settlement contains all information necessary for a Class
3 Member to assess the litigation, the settlement, and whether they want to participate, object, or opt-out.
4 See *id.* at ¶¶ 7.2, 7.5.1-7.5.3; Exhibit F. National change of address database searches, skip-traces, and
5 surveying of current employees will be utilized as set out in the Agreement to provide the best practical
6 means of ensuring Class Members receive the notice mailing. See Exhibit A, ¶¶ 7.3-7.4. Any
7 individual whose initial mailing was deemed undeliverable will have additional time to respond. See
8 *id.* at ¶ 7.4. Additional time to respond will also be provided to cure any deficiencies in opt-outs,
9 objections, or disputes. See *id.* ¶ 7.5.4. This notice method is regularly utilized in wage and hour class
10 actions and similar to the one approved in *Rannis*. Thus, the proposed procedures for notifying Class
11 Members satisfy due process and should be approved in this case.

12 **VI. THE AGREEMENT WARRANTS PRELIMINARY APPROVAL AS IT IS FAIR,**
13 **REASONABLE, AND ADEQUATE AS TO ALL CLASS MEMBERS BASED ON THE**
14 **FACTS OF THIS CASE**

15 A class action may not be dismissed, compromised, or settled without Court approval and the
16 decision to approve or reject a settlement is committed to the Court's sound discretion. See Cal. Rules
17 of Court, Rule 3.769; Fed. R. Civ. Proc., Rule 23(e)¹; *Wershba v. Apple Computer, Inc.*, 91 Cal. App.
18 4th 224, 234-35 (2001); see also Cal. Lab. Code §§ 2699(l)(2). However, "[d]ue regard should be given
19 to what is otherwise a private consensual agreement between the parties. The inquiry 'must be limited to
20 the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or
21 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole,
22 is fair, reasonable and adequate to all concerned.'" See *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794,
23 1801 (1996); see also *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2009); *In re*
24 *Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 (2006); *Nordstrom Com. Cases*, 186 Cal. App. 4th 576,
25 581 (2010). The law favors settlement of lawsuits, particularly class actions and other complex cases
26 where substantial resources can be conserved by avoiding the time, expense, and rigors of formal
27 litigation. See *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1117-1118 (2009); *In re*

28 ¹The California Supreme Court has authorized California's trial courts to rely on these federal resources to decide class certification issues. See *Green v. Obledo*, 29 Cal.3d 126, 145-46 (1981).

1 *Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 n.14 (2006); *Nordstrom Com. Cases*, 186 Cal. App. 4th
2 576, 581 (2010); *see also Neary v. Regents of Univ. of Cal.*, 3 Cal. 4th 273, 277-81 (1992).

3 **a. The Terms of The Settlement Are Fair and Within the Range of Reasonableness**

4 The purpose of the Court’s preliminary evaluation of a proposed class action settlement is to
5 determine only whether it is within the range of possible approval such that notice to the class of its
6 terms and conditions and the scheduling of a formal fairness hearing is warranted. *See Wershba*, 91 Cal.
7 App. 4th at 234-35. If the Court finds a proposed settlement falls within “the range of reasonableness,”
8 it should grant preliminary approval of the class action settlement. *See, e.g., North County Contr.’s*
9 *Assn., Inc. v. Touchstone Ins. Svcs.*, 27 Cal. App. 4th 1085, 1089-90 (1994); *Kullar v. Foot Locker*
10 *Retail, Inc.*, 168 Cal. App. 4th 116, 133 (2008). Factors to consider in determining whether the
11 settlement is fair, reasonable, and adequate include the strength of the Plaintiff’s case, the risk, expense,
12 complexity and likely duration of further litigation, the risk of maintaining class action status through
13 trial, the amount offered in settlement, the extent of discovery completed and the stage of the
14 proceedings, the experience and views of counsel, the presence of a governmental participant, and the
15 reaction of the class members to the proposed settlement. *See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th
16 1794, 1801 (1996). However, this Court should begin its analysis with a presumption that the proposed
17 settlement is fair. “A presumption of fairness exists where: (1) the settlement is reached through arm’s
18 length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act
19 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is
20 small.” *Id.* at 1802.

21 **i. The Agreement is a Result of Extensive, Non-Collusive Arm’s Length**
22 **Negotiations Between the Parties**

23 Settlement of this case was reached only after substantial litigation and extensive arm’s length
24 negotiations lasting one year and three months. *See Decl. Berzin*, ¶ 8. At all times, the negotiations
25 were adversarial, although still professional in nature. *See id.*

26 //

27 //

28 //

1 **ii. The Extent of Investigation and Discovery Completed Provided Ample**
2 **Information to Enter Into an Informed and Reasonable Settlement**

3 The Parties were in possession of all necessary information during the negotiations. The Parties
4 engaged in substantial informal discovery, which included all necessary components for evaluating the
5 class claims and creating an accurate damages model. *See id.* at ¶¶ 6-10. Plaintiff was in possession of
6 this information prior to calculating any damages in this case. *See id.* As a result, Plaintiff was able to
7 make a reasonable estimation of Defendant's potential liability. *See id.* For these reasons, the
8 settlement now before the Court was reached at a stage where “the parties certainly have a clear view of
9 the strengths and weaknesses of their cases” sufficient to support the settlement. *See Boyd v. Bechtel*
10 *Corp.*, 485 F.Supp. 610, 617 (N.D. Cal. 1979).

11 **iii. Plaintiff's Counsel are Experienced in Similar Litigation**

12 Plaintiff's counsel have considerable experience in complex litigation such as class and PAGA
13 actions. *See Decl. Berzin*, ¶¶ 11-20. Thus, Plaintiff's counsel are qualified to evaluate the class claims,
14 the value of settlement versus moving forward with litigation, and viability of possible affirmative
15 defenses. Plaintiff's counsel believe that the Agreement is fair, reasonable, and adequate in light of the
16 risks associated with the claims, the uncertainties of complex litigation, and the secured benefit to Class
17 Members. *See id.*

18 **iv. The Settlement is Fair, Reasonable, and Adequate Based on the Strength of**
19 **Plaintiff's Case and the Risks and Costs of Further Litigation**

20 Plaintiff's claims and the ability to obtain and maintain certification all the way through trial
21 were heavily disputed by Defendant. *See Decl. Berzin*, ¶¶ 6-10. Based on the records and facts of this
22 case, Plaintiff has secured a gross recovery of approximately 7.7% of the maximum likely value of the
23 claims in this matter and between 13.3% and 75.1% of the more realistic range of recovery. *See Decl.*
24 *Berzin*, ¶¶ 10-11. The net recovery represents approximately 2.8% of the maximum likely value of the
25 claims in this matter and between 4.8% and 27.2% of the more realistic range of recovery. The average
26 net award is approximately \$646.42. *See id.*

27 This settlement is a reasonable compromise of the class and PAGA claims, and is within the
28 percentile ranges of the total available damages that have been approved in other class settlements. *See*

1 *Wershba*, 91 Cal.App.4th at 246, 250; *Rebney v. Wells Fargo Bank*, 220 Cal.App.3d 1117, 1139
2 (1990); *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 628 (9th Cir. 1982); *see also In re*
3 *Omnivision Technologies, Inc.*, 559 F.Supp.2d 1036, 1042 (2007) (noting that certainty of recovery in
4 settlement of 6% of maximum potential recovery after reduction for attorney’s fees was higher than
5 median percentage for recoveries in shareholder class action settlements, averaging 2.2%-3% from
6 2000 through 2002); *Bravo v. Gale Triangle, Inc.*, 2017 U.S. Dist. LEXIS 77714 (C.D. Cal. 2017)
7 (approving a settlement where the net recovery to class members was approximately 7.5% of the
8 projected maximum recovery amount); *Avila v. Cold Spring Granite Co.*, 2017 U.S. Dist. LEXIS
9 130878 (E.D. Cal. 2017) (approving a settlement with a gross recovery of 11% of the projected
10 maximum damages available and a net recovery of approximately 6.7% of the projected maximum
11 recovery); *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245 (N.D. Cal. 2015) (approving a
12 settlement where the gross recovery was approximately 8.5% of the projected maximum recovery);
13 *Schiller v. David’s Bridal, Inc.*, 2012 U.S. Dist. LEXIS 80776 at *48 (E.D. Cal. 2012) (“Class
14 Members will receive an average of approximately \$198.70, with the highest payment to a Class
15 Member being \$695.78 . . . Overall, the Court finds that the results achieved are good, which is
16 highlighted by the fact that there was no objection to the settlement amount or the attorneys’ fees
17 requested.”); *Gardner v. GC Servs., LP*, 2012 U.S. Dist. LEXIS 47043, 18 (S.D. Cal. 2012) (“the
18 results achieved in this case were very favorable. Class members are provided with immediate
19 monetary relief, with an average award of around several hundred dollars and a minimum award of
20 \$50”).

21 **v. The Proposed Settlement is a Reasonable Compromise of Claims**

22 In *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116 (2008), the Court required additional
23 information be presented in class action settlements “to ensure that the recovery represents a reasonable
24 compromise, given the magnitude and apparent merit of the claims being released, discounted by the
25 risks and expenses of attempting to establish and collect on those claims by pursuing the
26 litigation” *Id.* at 129. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal.App.4th 399
27 (2010), clarified that *Kullar* does not require an illusory prediction of the outer reaches of exposure
28 without taking into account the actual risks of litigation such as dispositive motions and trial. *Kullar*

1 also does not require an explicit statement of the maximum amount to be recovered if a plaintiff
2 prevailed on all the claims, provided there is a record that allows “an understanding of the amount that
3 is in controversy and the realistic range of outcomes of the litigation.” *Id.* at 409.

4 Plaintiff has thoroughly set forth the realistic range of outcomes in this litigation as well as the
5 data points relied upon in reaching these ranges. *See* Decl. Berzin, ¶¶ 9-10. The record demonstrates
6 that the compromises made by Plaintiff was reasonable and have resulted in a settlement with recovery
7 percentage well within the range of what has been found to be sufficient in several other cases. *See*,
8 *supra*, Section VI.a.iv; *see also* *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1242 (9th Cir. 1998)
9 (“The fact that a proposed settlement may only amount to a fraction of the potential recovery does not,
10 in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved”);
11 *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 455 (2d Cir. 1974) (“In fact there is no reason, at least
12 in theory, why a satisfactory settlement could not amount to a hundredth or even a thousandth part of a
13 single percent of the potential recovery”).

14 **b. Provisional Certification of the Class is Appropriate**

15 Class certification is appropriate when (1) the class is ascertainable and (2) there is “a well-
16 defined community of interest in the questions of law and fact involved affecting the parties to be
17 represented.” *Dunk*, 48 Cal. App. 4th at 1806. The “community of interest” element “embodies three
18 factors: (1) common questions of law or fact predominate; (2) class representatives with claims or
19 defenses typical of the class; and (3) class representatives who can adequately represent the class.” *Id.*
20 Here, the Parties agree that, for the purposes of settlement, these prerequisites are met. *See* Exhibit A.

21 **i. The Proposed Settlement Class is Ascertainable and Sufficiently Numerous**

22 The proposed settlement class is ascertainable because all putative Class Members can be
23 readily identified through employee personnel and payroll files. *See* *Noel v. Thrifty Payless, Inc.*, 7
24 Cal.5th 955, 980 (2019); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 932 (1981); *Lee v. Dynamex*,
25 *Inc.*, 166 Cal. App. 4th 1325, 1334 (2008). The numerosity requirement is met because there are
26 approximately 75 individuals who fall within the definition of Class Member, which makes joinder of
27 all members impracticable. *See* *Gay v. Waiters' & Dairy Lunchmen's Union*, 489 F.Supp. 282 (N.D.
28 Cal. 1980), *aff'd* 694 F.2d 531 (9th Cir. 1982); *Hebbard v. Calgrove*, 28 Cal. App. 3d 1017, 1030

(1972) (noting no set minimum to meet the numerosity prerequisite, but a class as few as twenty-eight (28) members is acceptable). Thus, these requirements are satisfied.

ii. The Commonality, Predominance, and Typicality Requirements are Met

The commonality requirement is met when there are questions of law or fact regarding the class as a whole. *See Hanlon*, 150 F.3d at 1019. Commonality requires only that some common legal or factual questions exist; Plaintiff need not show that all issues in the litigation are identical. *See Richmond v. Dart Ind., Inc.*, 29 Cal.3d 462, 473 (1981); *City of San Jose v. Superior Court*, 12 Cal.3d 447, 460 (1974). Common questions of law or fact must also predominate over individual questions and class-wide treatment of a dispute must be superior to individual litigation.² *See Richmond*, 29 Cal.3d at 469. Predominance requires a putative class be sufficiently cohesive to warrant adjudication by representation. *See Hanlon*, 150 F.3d at 1022. The typicality requirement is met when claims of the named representative are typical of those of the class, though “they need not be substantially identical.” *Id.* at 1020; *Classen v. Weller*, 145 Cal. App. 3d 27, 46-47 (1983).

The common questions of law and fact in this case stem from Plaintiff's contention that Defendant 1) failing to compensate Class Members for time spent during required weekly meetings and time spent outside of their scheduled shifts waiting for relief (*i.e.*, the next employee to arrive at the work location); 2) failing to provide Class Members with duty-free meal and rest periods; and 3) failing to reimburse Class Members for the use of their personal cellphones for work. *See Exhibit B*. The wage statement, waiting time, unfair competition, and PAGA claims are derivative. *See id.* Plaintiff and the Class Members seek the same remedies under state law. Under these specific circumstances, the commonality and predominance requirements are satisfied. Regarding the typicality requirement, Plaintiff contends he suffered from the same unlawful policies, treatment, and circumstances as Class Members did, will request the same remedies, and will rely on the same methods of proof to establish liability and damages. *See id.* Thus, the typicality requirement is also satisfied for settlement purposes.

iii. The Adequacy Requirement is Met

The adequacy of representation requirement is met if the named representative and counsel have

²When assessing predominance and superiority, a court may consider that the class will be certified for settlement purposes only and that manageability of trial is therefore irrelevant. *See Amchem Products v. Windsor*, 521 U.S. 591 (1997).

1 no interests adverse to those of the putative class members and are committed to vigorously prosecuting
2 the case on behalf of the class. *See Hanlon*, 150 F.3d at 1020; *McGhee v. Bank of America*, 60
3 Cal.App.3d 442, 450-51 (1976). Those standards are met here. Under the proposed Agreement,
4 Plaintiff and the putative Class Members will receive a pro rata share of the settlement based on the
5 number of workweeks they worked for Defendant. *See Exhibit A*. Finally, any settlement class
6 member who wishes to opt-out of the settlement may do so, and he or she may also dispute the number
7 of workweeks stated in the Notice of Settlement (Exhibit F).

8 There is no conflict of interest between Plaintiff and Class Members. Plaintiff and Plaintiff's
9 counsel have pursued the claims made in the operative Complaint vigorously on behalf of the class.
10 Plaintiff's counsel, with Plaintiff's assistance, thoroughly investigated the claims made in this case by
11 speaking with Plaintiff and reviewing substantial amounts of documents. Plaintiff's counsel thereafter
12 engaged Defendant's counsel in settlement discussions over the course of approximately one year and
13 three months. Moreover, Plaintiff's counsel has experience defending and bringing wage and hour
14 claims. Because Plaintiff's counsel has vigorously pursued Plaintiff's and the Class Members' claims,
15 the adequacy requirement is met. *See generally* Decl. Berzin.

16 **VII. ATTORNEYS FEES AND COSTS, ENHANCEMENT PAYMENT TO THE CLASS**
17 **REPRESENTATIVE, AND SETTLEMENT ADMINISTRATOR COSTS TO BE**
18 **REQUESTED IN CONNECTION WITH FINAL APPROVAL**

19 Plaintiff is not requesting any determination with respect to attorney's fees and costs,
20 Enhancement Payment, or Settlement Administrator Costs at this time. Rather, should the Court grant
21 preliminary approval, Plaintiff will make the request for these amounts as set out in the Agreement as
22 part of their final approval briefing. Specifically, Plaintiff will request the Court award attorney's fees
23 in the amount of \$43,750 (35% of the Gross Settlement Amount), costs in an amount not to exceed
24 \$6,000, Settlement Administrator Costs in an amount not to exceed \$10,000, and an Enhancement
25 Payment for the Class Representative in the amount of \$10,000.

26 Plaintiff believes an award of attorney's fees under the common fund doctrine is appropriate in
27 this case as there is a sufficiently identifiable class of beneficiaries (*e.g.* the settlement class), the
28 benefits received can be accurately traced to the settlement Plaintiff and Class Counsel were able to
negotiate on behalf of Class Members, and the fee can be shifted with exactitude to those benefiting as

1 the fee request is a specific, lump-sum percentage of the fund. *See Laffitte v. Robert Half Internat.,*
2 *Inc.*, 1 Cal.5th 480, 506 (2016); *Paul, Johnson, Alston & Hunt v. Graulity*, 886 F.2d 268, 271 (9th Cir.
3 1989); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 477-478 (1980) (“A lawyer who recovers a common
4 fund for the benefit of persons other than . . . her client is entitled to a reasonable attorney’s fee from
5 the fund as a whole.”); *see also Martin v. Ameripride Servs.*, 2011 U.S. Dist. LEXIS 61796, *22-23
6 (S.D. Cal. 2011) (collecting cases); *Birch v. Office Depot, Inc.*, USDC Southern District, Case No.
7 06cv1690 DMS (WMC) (awarding 40% fee on a \$16 million wage and hour class action settlement);
8 *Rippee v. Boston Mkt. Corp.*, USDC Southern District, Case No. 05cv1359 BTM (JMA) (awarding a
9 40% fee on a \$3.75 million wage and hour class action settlement); *West v. Circle K Stores, Inc.*, 2006
10 U.S. Dist. LEXIS 76558, at *7-*8, *12, *27 (E.D. Cal. 2006) (awarding a \$15,000 representative
11 enhancement where 10,000 class members were to receive a gross award of approximately \$500 each
12 from the \$5,000,000 settlement); *Dent v. ITC Serv. Croup*, 2013 U.S. Dist. LEXIS 139359, at *9-*10,
13 *15-*16 (D. Nev. Aug. 6, 2013) (awarding a \$15,000 representative enhancement out of a \$150,000
14 settlement for approximately 530 class members); *Patel v. Nike Retail Services, Inc.*, 2019 WL
15 2029061 at *2 (N.D. Cal. 2019) (\$5,261 for settlement administrator’s fees was not excessive where
16 PAGA group consisted of 40 employees).

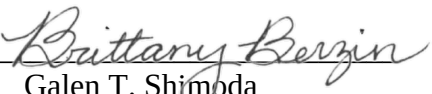
17 Plaintiff’s final approval briefing will include information and analysis regarding the
18 appropriateness of the fee percentage sought, a lodestar cross check of the requested fee, a detailed
19 declaration from Plaintiff regarding their time spent on the case as well as any risks and burdens
20 incurred as the Class Representative, an itemized costs spreadsheet, and a declaration from the
21 Settlement Administrator detailing the work performed and Settlement Administrator Costs incurred.
22 *See Decl. Berzin*, ¶ 21. The Notice of Settlement will state the amounts to be requested to provide
23 Class Members the ability to comment thereon, providing evidence of whether the requested amounts
24 are reasonable. *See Exhibit F* at pg. 2, § II.A; *see also In re Heritage Bond Litig.*, 2005 U.S. Dist.
25 LEXIS 13555, 71 (C.D. Cal. 2005) (“the absence of objections or disapproval by class members to
26 class counsel’s fee request further supports finding the fee request reasonable”). Any allocated
27 amounts not ultimately awarded by the Court will be distributed to Class Members pro rata. *See*
28 *Exhibit A*, ¶¶ 5.2-5.4, 5.8.

1 **VIII. CONCLUSION**

2 For all of the foregoing reasons, Plaintiff respectfully requests that this Court preliminarily and
3 conditionally certify the class for settlement purposes; grant preliminary and conditional approval of
4 the proposed settlement; approve the proposed notification procedures, including the Notice of
5 Settlement and proposed deadlines relating thereto; and schedule the final approval hearing. A copy of
6 Plaintiff's proposed order is being filed concurrently herewith.

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10 **Shimoda & Rodriguez Law, PC**

11 Dated: June 26, 2023

12 By: 
13 Galen T. Shimoda
14 Justin P. Rodriguez
15 Brittany V. Berzin
16 Attorneys for Plaintiff
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Attorneys for Plaintiff KHALIL MCGHEE

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

KHALIL MCGHEE, individually and on
behalf of all other similarly situated
employees,

Plaintiff,

vs.

SALUTE INCORPORATED, a Michigan
Corporation; and DOES 1 to 100, inclusive,

Defendants.

Case No. 34-2022-00315317

CLASS ACTION

**DECLARATION OF KHALIL MCGHEE IN
SUPPORT OF PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Reservation No. 2721356

Date: July 21, 2023

Time: 9:00 a.m.

Dept.: 28

Judge: Hon. Lauri A. Damrell

Filed: February 10, 2022

FAC Filed: April 25, 2022

Trial Date: None Set

1 I, Khalil McGhee, declare:

2 1. I am a competent adult, I have personal knowledge of the facts set forth in this
3 declaration, and I am making this declaration on behalf of myself, as a named plaintiff, and in support
4 of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement.

5 2. I worked for Salute Mission Critical LLC (formerly known as Salute Incorporated and
6 hereinafter referred to as "Defendant") from approximately June 9, 2021 to September 11, 2021 as a
7 non-exempt employee. I was subject to all of Defendant's policies and practices that have been alleged
8 as unlawful in the Complaint and the notice sent to the Labor and Workforce Development Agency,
9 including the following: failure to pay overtime wages, failure to pay minimum wages, failure to
10 provide meal periods or pay premiums in lieu thereof, failure to provide rest periods or pay premiums
11 in lieu thereof, failure to provide accurate wage statements, failure to pay all final wages, failure to
12 reimburse expenses, and unfair competition.

13 3. I have actively participated in the litigation of this case for the benefit of all Class
14 Members. My attorneys explained to me the risks and benefits of bringing a class action and a claim
15 under the Private Attorneys General Act ("PAGA"). I understood that pursuing the case as a class and
16 PAGA action meant that it would take substantially longer than pursuing my claims individually,
17 whether in Court or with the California Labor Commissioner, and that I risked getting nothing in the
18 end, but I believed it was important to make sure that Defendant followed the law for everyone. I
19 understood that I took on the risk, both professionally and financially, in pursuing the case as a class
20 and PAGA action rather than pursuing my claims individually. As a Class Representative, I also took
21 on the risk of having to pay Defendant's costs if we were unsuccessful in bringing our claims.

22 4. During the course of this litigation, I have given detailed accounts of all the facts related
23 to my employment, provided my attorneys with all documents in my possession that I believe
24 supported the claims brought against Defendant, and provided contact information for witnesses. I
25 assisted my attorneys in understanding the documents I produced and those produced by Defendant and
26 provided insight into Defendant's policies and practices as they applied to myself and how I believed
27 they applied to other Class Members. I went over facts in detail related to reimbursements, hours
28 worked, timekeeping, and meal and rest periods and responded to inquiries from my attorneys about

1 Defendant's contentions regarding their policies and practices in effect during the Class Period. I also
2 answered any questions from my attorneys in connection to their review of the sample of time and pay
3 records for Class Members.

4 5. I participated in the negotiations and settlement discussions in this case, speaking with
5 my attorneys to answer questions, provide any additional information needed to assist the negotiations,
6 and discussing the potential terms of the Agreement to evaluate its adequacy. Throughout the course of
7 this litigation I have asked questions when I needed clarification about various aspects of this case to
8 make sure there were continually steps taken to advance the interests of Class Members.

9 6. Although I have already spent a substantial amount of time on this case and assisting my
10 attorneys, I expect the amount of time I spend on this case will increase if preliminary approval is
11 granted because Class Members will likely reach out to me about the Settlement and the process for
12 receiving payment.

13 7. I have not received any benefits as a result of filing this lawsuit. I have, however,
14 experienced substantial burdens as a result of filing the lawsuit that other Class Members were not
15 subject to. For example, in bringing the lawsuit, I assumed the risk of having to pay Defendant's costs
16 if the Court or jury rules against us on the claims. My understanding is that this is a substantial risk
17 because the costs associated with litigation, in general, are very high and this cost is multiplied many
18 times over in complex litigation like class actions. I have spent a substantial amount of time in this
19 case, securing a monetary benefit for many individuals who have not had to do anything whatsoever to
20 have the opportunity to receive it. I have been employed full/part-time during the majority of the time
21 this case has been pending. As a result, the time I have spent on this case has to occur during my lunch
22 and/or breaks times, after hours, and on my days off. Rather than spend this time with friends and
23 family, I have spent this time for the benefit of Class Members. Finally, as part of the Settlement, I am
24 the only individual providing a general release of all my individual claims and waiving the protections
25 of California Civil Code section 1542 for unknown claims. No other Class Member is subject to such a
26 broad release.

27 //

28 //

8. I have reviewed the final Class Action and PAGA Settlement Agreement and Release, discussed the terms with my attorney, and asked my attorney any questions I had. I believe the terms of the Settlement and allocations are fair and reasonable given the facts of the case.

9. I understand that any Class Representative Enhancement Payment I may receive is for my participation as a Class Representative and it is not contingent on my support or approval of the Agreement.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on June 26, 2023 in Sacramento, California.

DocuSigned by:

1CF559AC89EA43E....
Khalil McGhee

Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
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Attorneys for Plaintiff KHALIL MCGHEE

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

KHALIL MCGHEE, individually and on
behalf of all other similarly situated
employees,

Plaintiff,

vs.

SALUTE INCORPORATED, a Michigan
Corporation; and DOES 1 to 100, inclusive,

Defendants.

Case No. 34-2022-00315317

CLASS ACTION

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Reservation No.: 2721356

Date: July 21, 2023

Time: 9:00 a.m.

Dept.: 28

Judge: Hon. Lauri A. Damrell

Filed: February 10, 2022

FAC Filed: April 25, 2022

Trial Date: None Set

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion for Preliminary Approval of Class Action and PAGA Settlement (“Motion”) in the
3 above referenced case came before this Court, on July 21, 2023 at 9:00 a.m., in Department 28 before
4 the Honorable Lauri A. Damrell, presiding. Named Plaintiff Khalil McGhee (“Plaintiff”) filed this
5 putative class action on February 10, 2022. The operative Complaint alleges that Salute Mission
6 Critical LLC (formerly known as Salute Incorporated and hereinafter referred to as “Defendant”)
7 violated California law by failing to pay overtime wages, failing to pay minimum wage, failing to
8 provide meal periods or pay premiums in lieu thereof, failing to provide rest periods or pay premiums
9 in lieu thereof, provide accurate wage statements, failing to pay all final wages, failing to reimburse
10 expenses, and engaging in unfair competition. Plaintiff has also alleged Defendant is liable for a civil
11 penalties under the Private Attorneys General Act (“PAGA”) based on these violations. Plaintiff
12 sought attorneys’ fees and costs as part of this Action. Defendant denied all of Plaintiff’s claims and
13 denied that this case was appropriate for class treatment. No class has been certified.

14 The parties have agreed to settle the class and PAGA claims. Defendant will provide monetary
15 consideration in exchange for a release of claims consistent with the terms of the proposed settlement
16 as set forth in the Joint Stipulation Regarding Class Action and PAGA Settlement and Release
17 (“Agreement” or “Settlement”). Any capitalized terms herein shall have the same meaning as set forth
18 in the Agreement. The Court, having received and considered Plaintiff’s Motion for Preliminary
19 Approval of Class Action and PAGA Settlement, the declarations in support, the Agreement, the
20 proposed Notice of Settlement, and other evidence, HEREBY ORDERS AND MAKES
21 DETERMINATIONS AS FOLLOWS:

22 **I. PRELIMINARILY CERTIFYING A SETTLEMENT CLASS; APPOINTMENT OF**
23 **CLASS REPRESENTATIVES; APPOINTMENT OF CLASS COUNSEL**

24 The Court finds that certification of the following class for settlement purposes only is
25 appropriate under the California Code of Civil Procedure and related case law:

26 Any and all non-exempt employees who have worked, or continue to
27 work, for Defendant in California from February 10, 2018 up to either: (1)
28 the Preliminary Approval Date, or (2) July 24, 2023, whichever is earlier.

1 The Court recognizes that the foregoing definition is for Class Member identification purposes
2 only and is not intended to capture the claims at issue or limit or alter the released claims under the
3 Agreement.

4 The Court finds that Class Members meet the ascertainability and numerosity requirements since
5 the parties can identify with a matter of certainty, based on payroll records, individuals who fall within
6 the definition and the number of Class Members would make joinder impractical. The commonality and
7 predominance requirements are met for settlement purposes since there are questions of law and fact
8 common to Class Members. The common questions of law or fact in this case all stem from Plaintiff's
9 contentions that Defendant caused the violations outlined above by 1) failing to compensate Class
10 Members for time spent during required weekly meetings and time spent outside of their scheduled
11 shifts waiting for relief (*i.e.*, the next employee to arrive at the work location); 2) failing to provide Class
12 Members with duty-free meal and rest periods; and 3) failing to reimburse Class Members for the use of
13 their personal cellphones for work. The wage statement, waiting time, PAGA and unfair competition
14 claims are derivative. Additionally, Class Members seek the same remedies under state law. The
15 typicality requirement for settlement purposes is also satisfied since the claims of the Class
16 Representative is based on the same facts and legal theories as those applicable to the class members.

17 The Court also finds that preliminarily and conditionally certifying the settlement class is
18 required to avoid each Class Member from litigating similar claims individually. This Settlement will
19 achieve economies of scale for Class Members with relatively small individual claims and conserve the
20 resources of the judicial system.

21 The Court finds that Plaintiff Khalil McGhee and Plaintiff's counsel, Galen T. Shimoda,
22 Justin P. Rodriguez, and Brittany V. Berzin of Shimoda & Rodriguez Law, PC, to be adequate
23 representatives of the settlement class. The Court appoints them as Class Representative and Class
24 Counsel, respectively.

25 **II. PRELIMINARILY APPROVING CLASS ACTION AND PAGA SETTLEMENT**

26 The Court has reviewed the Agreement, which was submitted with Plaintiff's Motion as Exhibit
27 A. The Court finds, on a preliminary and conditional basis, that the Settlement is fair, reasonable, and
28 adequate and falls within the range of reasonableness of a settlement that could ultimately be given final

1 approval by this Court. The Court finds the Settlement was agreed upon only after extensive
2 investigation, litigation, and arms-length negotiations by counsel experienced in complex litigation, who
3 took reasonable steps and measures to weigh the potential value of the disputed claims against the risks
4 of continued litigation. The Court also acknowledges that Class Members may present any objections to
5 the Settlement at a fairness hearing approved by this Court or opt-out of being bound by the
6 preliminarily approved Agreement. The Court preliminarily approves the Agreement and all terms
7 therein as if stated here in full, including the \$125,000 Gross Settlement Amount.

8 The Court approves of ILYM Group, Inc. acting as the Settlement Administrator in this case and
9 hereby appoints them to fulfill those duties as outlined in the Agreement.

10 The Court finds that an award of fees under the common fund doctrine may be appropriate in this
11 case because there is a sufficiently identifiable class of beneficiaries (*i.e.* Class Members), the benefits
12 that Plaintiff and Class Counsel were able to negotiate on behalf of Class Members can be accurately
13 traced as set forth in the Agreement, and the fee can be shifted with exactitude to those benefiting as the
14 fee request is a specific, lump-sum percentage of the Gross Settlement Amount. *See Laffitte v. Robert*
15 *Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016); *Paul, Johnson, Alston & Hunt v. Grawlty*, 886 F.2d 268,
16 271 (9th Cir. 1989); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 477-478 (1980) (“A lawyer who recovers
17 a common fund for the benefit of persons other than . . . her client is entitled to a reasonable attorney’s
18 fee from the fund as a whole.”). The amounts allocated under the Agreement for attorney’s fees and
19 costs, for an Enhancement Payment to the Class Representative, and Settlement Administrator Costs
20 shall be included in the Notice of Settlement to enable Class Members to review and comment thereon.
21 The Court will consider the reaction of Class Members when evaluating the reasonableness of the
22 requested amounts at final approval. *See In re Heritage Bond Litig.*, 2005 U.S. Dist. LEXIS 13555, 71
23 (C.D. Cal. 2005) (“the absence of objections or disapproval by class members to class counsel’s fee
24 request further supports finding the fee request reasonable”). Plaintiff and Class Counsel are directed to
25 provide information in connection with the motion for final approval that will enable the Court to assess
26 the appropriateness of any requested fee percentage, to perform a lodestar cross check of the requested
27 fee percentage, and to quantify the amount of time spent by Plaintiff on this case and any further risks
28 and/or burdens incurred as a result of acting as Class Representative. Class Counsel is also directed to

1 provide an updated declaration and itemization regarding actual litigation costs incurred. The
2 Settlement Administrator shall also submit a declaration attesting to Settlement Administrator Costs
3 incurred. The Court will review these amounts and allocations in connection with the final approval
4 hearing. To the extent the Court ultimately awards less than the amounts allocated under the Agreement
5 for attorney's fees and costs, for an Enhancement Payment to the Class Representative, and/or
6 Settlement Administrator Costs, the difference between the amounts awarded and the amounts requested
7 shall be added to the Net Settlement Amount for distribution to Participating Class Members pro rata as
8 set forth in the Agreement.

9 The Court approves of the Ten Thousand Dollars (\$10,000) PAGA Payment, which shall be paid
10 from the Gross Settlement Amount, not in addition to the Gross Settlement Amount, to resolve the
11 alleged PAGA claims. Seventy-Five percent (75%) of the PAGA Payment will be paid to the Labor and
12 Workforce Development Agency ("LWDA") and Twenty-Five percent (25%) will be paid to Aggrieved
13 Employees on a pro rata basis as described in the Agreement. The Court also finds that the Agreement
14 provides a recovery that creates an effective, substantial deterrent to any potential future non-
15 compliance, furthering the purpose of the Labor Code and LWDA.

16 The Court approves of the identified *cy pres* beneficiaries and distribution plan wherein any
17 checks issued to Participating Class Members and/or Aggrieved Employees that are not cashed by the
18 deadline to do so shall be donated equally, *i.e.*, 50/50, to Capital Pro Bono, Inc., and the Center for
19 Workers' Rights. *See In re Microsoft I-V Cases*, 135 Cal.App.4th 706, 718 (2006). No portion of the
20 Gross Settlement Amount will revert to Defendant for any reason.

21 The releases and waivers for Class Members who do not opt out of being bound by the
22 Agreement (*i.e.*, Participating Class Members), Aggrieved Employees, and the Class Representative are
23 also approved by the Court as set forth in the Agreement.

24 **III. APPROVAL OF THE DISTRIBUTION METHOD OF NOTICE TO THE CLASS,** 25 **INCLUDING THE NOTICE OF SETTLEMENT**

26 The Court finds that the proposed Notice of Settlement, which was submitted with Plaintiff's
27 Motion as Exhibit F, fairly and adequately advises Class Members of the terms of the Agreement, the
28 rights being waived, their right to opt out, the ability to dispute the number of workweeks worked during

the Class Period, their pro rata share of the Net Settlement Amount, how to participate in the settlement, how to file documentation in opposition to the proposed settlement, and when to appear at the fairness hearing to be conducted on the date set forth below. The Court further finds that the Notice of Settlement and proposed distribution of such notice by first class mail to each identified Class Member at his or her most recent address based on a National Change of Address database search from the Class Members' last known address and a skip trace on any Class Members who have the Notice of Settlement returned as "undeliverable" or "not at this address" comports with all constitutional requirements, including those of due process.

The Court also finds that because there is a strong interest in providing Class Members the opportunity to participate in the settlement, along with the Parties' efforts to minimize any intrusion to privacy rights, the sharing of employment information, including social security numbers, is not a serious intrusion on their privacy rights. Hence, the Court orders Defendant to provide first and last name, last known mailing address, social security number, and hire and termination dates, total number of workweeks during which the Class Member performed any actual work to the Settlement Administrator only, and not to Plaintiff or Class Counsel, in order to process this settlement as contemplated within the Agreement and approved by this Order. The Settlement Administrator shall only use this information for the purposes identified in the Agreement and shall keep this information confidential consistent with the terms of the Agreement.

IV. IMPLEMENTATION SCHEDULE

Accordingly, with good cause shown, the Court hereby approves and orders that the following implementation schedule be adhered to:

Last day for Defendant to provide Settlement Administrator with Class Data	Within 14 calendar days after the Preliminary Approval Date
Last day for Settlement Administrator to complete NCOA search, update Class Member and Aggrieved Employee mailing information, and mail Notice of Settlement	Within 7 calendar days after the Settlement Administrators' receipt of Class Data

Last day for Class Members to opt-out, submit disputes, submit objections, and submit data requests	45 calendar days after mailing of Notice of Settlement or within 10 days after Notice of Settlement is re-mailed, whichever is later
Last day for Settlement Administrator to provide Parties with signed declaration reporting on settlement administration statistics	Within 7 calendar days after end of the Notice Period
Last day for Defendant to provide Settlement Administrator with all necessary information to complete employer-side tax calculations	By the Final Approval Date
Last day for Settlement Administrator to calculate the final Net Settlement Amount, the final Individual Settlement Amounts for Participating Class Members and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations to Class Counsel and Defendant's Counsel	Within 7 calendar days after the Effective Date
Last day for Defendant to fund settlement	Within 21 calendar days after the Effective Date or of receiving employer-side tax calculations and wire instructions, whichever is later
Last day for Settlement Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payments, PAGA Payment, Settlement Administrator Costs, payment to Participating Class Members, and payment to Aggrieved Employees	Within 7 calendar days after Defendant has funded the settlement
Last day for Participating Class Members and Aggrieved Employees to cash settlement checks	180 calendar days after issuance of checks to Participating Class Members and Aggrieved Employees
Last day for Settlement Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries	Within 14 calendar days after settlement check cashing deadline

1 **FINAL APPROVAL AND HEARING**

2 The Court hereby grants Plaintiff's Motion and sets final approval hearing on the proposed date
3 of November 3, 2023, at 9:00 a.m., with briefs and supporting documentation to be submitted according
4 to the California Code of Civil Procedure, in this Department. Participating Class Members who object
5 in a timely manner as set forth in the Agreement, may appear and present such objections at the fairness
6 hearing in person or by counsel.

7 If for any reason the Court does not grant final approval of the Agreement, all evidence and
8 proceedings held in connection therewith shall be without prejudice to the status quo and rights of the
9 parties to the litigation, including all challenges to personal jurisdiction and to class certification for any
10 purpose other than approving a settlement class. The parties will revert to their respective positions as if
11 no settlement had been reached at all.

12 **IT IS SO ORDERED.**

13
14 Date: _____

By: _____
Judge of the Superior Court